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T. N. Farris

PROCEEDINGS OF THE NATIONAL TAX ASSOCIATION

PROCEEDINGS

OF THE

SEVENTEENTH ANNUAL CONFERENCE

ON TAXATION

UNDER THE AUSPICES OF THE

National Tax Association

HELD AT ST. LOUIS, MISSOURI
SEPTEMBER 15–19, 1924

WITH APPENDIX

CONTAINING

Proceedings of Preliminary Conference on Inheritance and Estate Taxation

HELD SEPTEMBER 15, 1924

EDITED BY

ALFRED E. HOLCOMB, Secretary

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Objects

Its objects shall be to formulate and announce, through the deliberately expressed opinion of an annual conference, the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion, legislative and administrative action on all questions pertaining to taxation, and to interstate comity in taxation.—Art. I, Sec. 2.

THE ANNUAL CONFERENCE

Organization of the Conference

The temporary and permanent chairman, secretary and official stenographer; address of welcome and response to the same; meeting place, accommodations for delegates, and all necessary preliminary details for each conference; and also the program of papers and discussions, shall be arranged for the conference by the executive committee of this association. All other details of the organization and work of the conference shall be arranged by the delegates present in such manner as they may from time to time decide.—Art. III, Sec. 8.

Time and Place

An annual national conference on taxation shall be held under the auspices of this association during the month of September in each year, or at such time and place as its executive committee may determine. The details of each conference shall be arranged by the executive committee in cooperation with such special and standing committees as may be created by this association at its annual meetings for such purpose.—Art. III, Sec. 1.

Personnel

The administrative personnel of each annual conference shall be composed of three delegates appointed by the governor of each state, and public officials holding legislative or administrative positions charged with the duty of investigating, legislating upon, or administering tax laws.

The educational personnel of each annual conference shall be composed of persons identified with universities and colleges that maintain a special course in public finance, or at which that subject receives special attention in a general course of economics; members of the profession of certified public accountants; and public men, editors, writers and speakers who hold no educational or official position but who have developed a special interest in the subject of taxation.—Art. III, Secs. 2 and 3.

Voting Power

The voting power in each conference upon any question involving an official expression of the opinion of the conference shall be vested in delegates appointed by governors of states, universities and colleges, or institutions for higher education, and state associations of certified public accountants, each of whom shall have one vote.

Voting by proxy shall not be allowed.

No member of this association shall have the right to vote in any annual conference by virtue of such membership.—Art. III, Secs. 4, 5 and 6.

Resolutions and Conclusions

The last session of each annual conference, or so much of it as may be necessary, shall be devoted to the consideration of the report of the conference committee on resolutions and conclusions. The report of this committee, as adopted by the conference, shall be its official expression of opinion, and it shall not be held to have endorsed any other expression of opinion by whomsoever made. The voting power of the conference upon an official expression of its opinion is limited with the purpose of safeguarding the conference from the possibility of having its expression of opinion influenced by any class interest; or consideration for those who devote their time to the work or management of this association; or favor for those who contribute money for its support. The annual conference will be the means used by the association for carrying into practical effect its purpose to secure an expression of opinion that will formulate and announce the best informed economic thought and ripest administrative experience available for the correct guidance of public opinion legislative and administrative action on all questions pertaining to taxation, and to interstate comity in taxation. —Art. III, Sec. 7.

FIRST SESSION

Monday Evening, September 15, 1924

Mr. William Bailey, President of the National Tax Association, presiding.

President Bailey: Will you please come to order?

The National Tax Association calls this gathering for the purpose of discussing taxation. Everybody is invited to participate. It is necessary at this time that you select a chairman and secretary and proceed with the conference.

Mr. Scott (of Minnesota): Mr. Chairman, I desire to place in nomination the President of the National Tax Association, Mr. William Bailey, to be the permanent chairman of this conference.

(Motion duly seconded)

Mr. Scott: It is moved and seconded that Mr. Bailey be the permanent chairman of the conference.

(Ayes and Noes)

Mr. Scott: It is carried unanimously. Mr. Bailey is the permanent chairman of the conference.

President Bailey: Ladies and gentlemen, I thank you kindly; and we will proceed with the order of business. The next thing in order will be the selection of a permanent secretary.

Mr. Sayler (of Illinois): I move that Mr. A. E. Holcomb, secretary of the National Tax Association, be the permanent secretary of this conference.

(Motion duly seconded)

President Bailey: It is moved and seconded that Mr. Holcomb, the secretary of the National Tax Association, act as secretary of this conference.

(Ayes and Noes)

President Bailey: The ayes have it.

It affords me a great deal of pleasure tonight to announce that we have in our midst Governor Arthur M. Hyde, of Missouri, and also the Mayor of this beautiful city, Mr. Kiel. We will now hear from the worthy Mayor, Mr Kiel.

Mayor Henry W. Kiel (of St. Louis): Mr. Chairman, ladies and gentlemen: It is a pleasure for me to be here with you tonight on this occasion. The question of taxation is one that is always paramount; every one is interested in taxation, one way or the other. They either want to pay or they do not want to pay. Nevertheless they all reach the same place.

Taxation and death are about the only sure things, we are told, that there are in this world, but nevertheless taxation is a problem that requires a great deal of study; it requires a great deal of education. I am firm in my conviction that if people knew more about taxation, they would not be so ready to criticize. We do not like to pay taxes in the City of St. Louis, and yet when we figure exactly the cost of our local government, we find that the amount of money we pay is very meager, indeed. In the City of St. Louis, according to government statistics, it cost $40.02 per capita for the year closing April, 1923; that is equivalent to about eleven cents a day. If it were $36.50, it would be exactly ten cents a day, but it happens to be $40.02, and therefore it is eleven cents a day.

I have talked with a great many people as to what they receive for that eleven cents a day, and I maintain it is the cheapest thing that they can buy; to begin with, they get education for their children, because it includes the school tax; they get good roads and sidewalks, and health conditions, because it provides for all that; they get street lighting, and wholesome, pure water, because it includes the operation of the water works; they also get recreation in the parks and playgrounds, and we maintain a zoological garden and library and art gallery, so we have a lot of the luxuries of life; and last but not least we provide for the poor unfortunates that are housed in eleemosynary institutions. There are 7500 of those poor souls in St. Louis tonight that are taken care of, who are given a place to live; they are fed and clothed by the taxpayers of this City of St. Louis, and the whole thing costs about eleven cents a day for each person that resides in the City of St. Louis. When you figure it from that angle, I know you will all agree with me that it is not much. We spend ten cents—yes, more than ten cents—for a cigar, and we pay seven cents for a street-car ride; but when we stop and figure that we get water and light and the preservation of health and the care of our poor unfortunates, and all these recreation facilities, and the rest of the services, we know that we are getting something very cheap. If this could be instilled into the minds of the people when they pay their taxes, I know that they would not do so reluctantly.

Nevertheless, you have your problems. You must solve these problems in such a way that it meets with general approval; it is a difficult thing to do, but your time is not wasted when you gather at a conference of this kind, because from the exchange of thought

and ideas and the absorption of knowledge from one another, you take home and apply some new method or some improvements, whereby you may do something worth while in regulating or correcting the evils that may exist.

We were not accustomed to taxation until the World War. We did not know what an income tax was ten years ago, yet when questions come up we think we know all about them, and a lot of our people are pretty smart, and yet they are in trouble. The only way to keep out of trouble is conscientiously to go to the place of record and make your returns. If every one would do this, if every one would treat this tax problem as an obligation of their own; in other words, if there were no tax-dodgers, conditions would be far better; there would be less difficulty, less turmoil, less discord, and less trouble.

Here in the City of St. Louis I am convinced that we have a great many tax-dodgers. I am convinced of that, because of the comparison of our personal taxes in the City of St. Louis with other large cities in the State of Missouri. I know there are a lot of people in St. Louis who are not walking up to the counter and holding up their hands and telling the truth. Some may be going there and holding up their hands and not telling the truth, and some of them do not go at all. If we can devise ways and means of bringing in the delinquents, by either persuading or forcing them in, then the proportion will be a great deal less for those who do pay. It is not fair for one faction to pay more than another. We ought to be on an equal footing, and when we are on an equal footing, we shall have no cause to complain.

I think this is a worthy cause, and I appreciate the multitude of people who are assembled here tonight for the purpose of discussing this important question.

I know that your stay in St. Louis will be one that you will not regret, because St. Louis is a great city. I know it because I have been here for some time—a little over fifty-three years; I have grown up with St. Louis, and I have seen it prosper. I have seen it progress, and we have a very, very bright future to look forward to.

While you are here we want you to accept of our hospitality; we want you to feel at home. We are noted for hospitality in the City of St. Louis. We want you to avail yourselves of it. Make your stay a pleasant one, and accomplish all the good you can out of your business session; but do not lose sight of the fact that all work and no play makes Jack a dull boy; so play just a little bit. If you find time, go over tomorrow and look at the Zoological Garden. You will see one of the most attractive places it is possible to build. We have open-air bear-pits. You can get close to the wild animals. By going over there you can see every specimen of

wild animal. It interests the children more, perhaps, than the older folks, but when you get over there you will become a kid again; and it is something provided for through a method of taxation. St. Louis wanted a zoological garden, and the people imposed a tax upon themselves of two cents on the $100 of valuation, so that they might have it, and it is one of the best in the world. I know you will agree with me when you see it. And then there are many other places of attraction in St. Louis. If you do find time, visit the water works and the eleemosynary institutions. Go around and see our business districts. We have as fine department stores in St. Louis as there are in the world. I am saying that for the benefit of the ladies; everything will be nice and beautiful down there. It will cost some money. It is one of the habits of the people of St. Louis to usually charge for what they sell, and that is why St. Louis is a progressive city. It is a big community, but we are delighted to have you come here and spend a few days with us, and when you go away I hope you will feel that your time has not been wasted, but well spent, and that you will accomplish much good out of this meeting.

I want to impress upon you that you are as welcome as the flowers in May. (Applause)

Chairman Bailey: I take great pleasure at this time in introducing to you the Honorable Arthur M. Hyde, the Governor of Missouri. Please arise and greet the Governor. (All arise)

Governor Arthur M. Hyde (of Missouri): Mr. Chairman and ladies and gentlemen: I agree with all that the Mayor said about taxation being an outlaw subject. Whosoever cusses it has company, and whosoever discusses it does so alone, and whosoever fools with it takes his life in his hands. Out of a heart that is acquainted with grief, I guarantee the truthfulness of these statements.

I also agree with all that the Mayor said regarding the beneficence of the results of taxation. Even a charity would cease to be a charity the minute it was without support. It is Hornbook stuff that government must be supported, and it is one of the inalienable rights of an American citizen to kick when he is asked to contribute any part of it.

Your deliberation here holds possibilities. I can truthfully say that the labor of this association has already accomplished great and constructive results in connection with this vexing problem. I understand that you are to discuss to some extent the overlapping and conflicting fields of taxation occupied by local, state and national governments. That overlapping and that conflict merely add to the vexation and irritation which the taxpayer feels, and I sincerely trust that out of your deliberations may come some plan

whereby the National Government may have its field, the state government a different field, and the city government, if possible, a still different field, in order that the taxpayer may be freed from the irritation of making two sets of returns, or three sets, and in order that the taxpayer may be able to put his finger upon the return which he gets for the money which he pays in taxation. It would not only benefit the taxpayer, but would clarify the atmosphere if the taxpayer could know where his money goes and hold responsible that authority which collects it.

An illustration of that is afforded by this state. I suppose that the average tax of a municipality in this state for state, city, county, school, road and the other various special funds into which taxes on property are paid, would run around $2.50. Out of $2.50 the state gets ten cents, the school gets the largest part of the money. There may be those who object to paying taxes for good schools, but fortunately in Missouri they have never yet become sufficiently numerous to advocate openly any cessation of school activities.

I want to agree with the Mayor on another thing. He says this is a great and hospitable city. It is. But I want to confide to you the secret which he himself spilled, that all the hospitality you get, you will have to pay for. The hospitality of the City of St. Louis is just like the hospitality of any other hospitable city, and all such cities are like that Ozarkian hospitality. It was a traveler, I think, from this city who purchased a brand-new, shiny, yellow grip. He took a train into the Southwest, got off at a little hill town and went up and registered at the hotel. He went out on the gallery, as they call it down there, put his feet on the railing, and waited for what might happen. Soon a little boy came up, and he said, "Son, in all my life I have never seen a still; I have always wanted to see a still; if you will take me and show me a still, I will give you five dollars"; and the boy said, "All right". He led the way off up the dusty road toward a hill. Suddenly he stopped and said, "I think you better pay me." The traveling man said, "That will be all right; I will pay you when we get back"; and the boy said, "That will be all right, only you ain't coming back." (Laughter)

That is just like the hospitality of a hospitable city. It is a compelling brand of hospitality. You have to take it whether you want it or not, but they make you pay for it in advance.

My friends, I sincerely trust—nay, more, I believe that there is a solution that will satisfy the forward-looking, constructive American upon this problem of taxation. It is one that all Americans are perforce interested in. It is one that I should be glad, if I could, to help you solve. I hope you can solve the question of conflicting fields, and if you do, then all I can say is the National Tax Association has served mankind as well, if not better than any other association with which I have had any acquaintance.

I wish you complete success; I second all the Mayor said about your welcome, and I hope that you will have time to play with the minimum of expenditure. (Applause)

CHAIRMAN BAILEY: I have received some consolation in connection with the remarks made by the Mayor in that he told us that the per capita tax in this city is $40.02. If you come to Utah, we will charge you only $37 out there.

I should like to call on Doctor Page for a few remarks. Doctor Page is the Vice-President of the National Tax Association. He is from Washington, D. C. Doctor Page, will you come forward?

DR. THOMAS W. PAGE (of Washington, D. C.): Governor; Mr. Mayor: Our graceful presiding officer has requested me to tender you an expression of thanks from the National Tax Association for the words of welcome that you have just offered. I do so. I should like you to know that this is the seventeenth annual meeting of the National Tax Association. It is now nearly twenty years since the association has come into existence. It was two years, I think, after its first foundation that it held an annual conference. During these sixteen preceding years it has built up a body of information with regard to tax problems, and wholesome and healthful administrative methods by which taxation can be made least burdensome and most upright for American citizens, that now is in existence.

These meetings have served as an inspiration to those officials of the state governments and of the municipalities who have problems to solve which they must solve alone. All that the Governor has said, all that the Mayor has implied, about the unwillingness of the people to contribute even eleven cents a day for bear-pits and other things is quite true. Gladly as we should like to visit the bear-pits, so as to verify the excellence with which the tax officials in St. Louis have discharged their duties, we might perhaps inform the Mayor that from time to time we have ourselves staged a bear-pit, in some of our annual meetings. I trust that nothing of the kind will occur this year, but in the event of its possibility arising, I should like to extend to the Mayor, and also to the Governor, a cordial invitation to see what we can do in rivalry of the bears, to be maintained at less than eleven cents a day.

It is through the earnestness of the discussions that have occurred, it is because there has been dissent, because there has been difference of opinion, that the discussions of this association have been fruitful of great results.

There is, in my judgment, no national society, scientific, economic, or historical, no learned society in the United States, that can point to its achievements in the years that have passed with more satisfaction than can the National Tax Association. (Applause)

Its influence on the thought of men, its influence on the character of the tax officials that have been selected in the different states, its influence in getting justice for the people throughout this country, have been second to the influence of no other organization in the United States.

Now, I do not know how familiar the people of St. Louis may be with the past of the National Tax Association. So far as I am aware, we have never met in this city before. This is our first visit to St. Louis, and I will tell you one reason why we have come here. We knew, of course, the reputation to which these gentlemen have alluded, for hospitality in St. Louis; we have been interested from early childhood in the historic past of this great city; we have studied its capability of adapting itself to the different forms of government, as it has passed from one sovereignty to another in older days; and we have realized with appreciation how ready the people of St. Louis are to retain what is old and meritorious and at the same time to develop what is new and meritorious. Progress based upon conservatism has made this city great and beautiful as it is.

Here is the chief reason why we have selected St. Louis. It has been the policy of the executive committee of the association in the past, and particularly of that member of the executive committee whose modesty I will spare, but who really has been the guiding spirit of the association for years—it has been the policy to select for the meeting-place some locality where the deliberations of this body could proceed with a feeling that they had the sympathy and understanding of the community in which they met.

Now, we have come to St. Louis in the conviction that we shall not only be welcome socially, that we shall not only meet with reasonable hospitality, whether it costs us eleven cents a day or whether these threats of the Governor may be perhaps even more vicious than we anticipate—we have come here because we believe that in St. Louis there are many people who realize that the problems of taxation are growing annually more difficult, and that the people who are engaged in the study of those problems are those who need sympathy and encouragement, and we propose to take back to the states from which we came—and many states are represented here — the expressions of cordial welcome that have been given to us, and we shall regard those expressions as a stimulation to clear thought, and, we hope, to successful achievement.

We thank you, gentlemen, for your welcome. (Applause)

CHAIRMAN BAILEY: I should like to explain that the National Tax Association conference was booked for St. Louis in 1918, but they all got the "flu" down here, and we were afraid to come, and have not had courage enough to undertake it since until this year.

If Mr. W. G. Query will come forward, we should like to hear

from him for a few moments. Mr. Query is Chairman of the South Carolina Tax Commission. We shall be pleased to hear from Mr. Query at this time.

MR. W. G. QUERY (Chairman of the South Carolina Tax Commission): Mr. Chairman and gentlemen: Down in South Carolina we folks mostly raise cotton for the purpose of buying mules and corn to raise the cotton with each year. I have heard a good deal of Missouri but have never been to the state before, but after the very gracious words that have been spoken here tonight I shall feel very much at home, and in behalf of the members of the tax association we accept the very kind invitation that has been extended to us to spend several days in this beautiful city in the study of the great question of taxation.

In reading history a few days ago with my little ten-year-old boy, I noted that St. Louis, about one hundred years ago or thereabouts, was a trading-post on the banks of the Mississippi River, and as I came here today and rode around over this beautiful town I wondered in amazement at the growth that this city has made. As to your business ability and fair dealing I can testify, because I have bought a great many goods from this great wholesale center in St. Louis. You are noted for your mules, you are noted for your corn, but there is something else that Missouri is famous for down in our country; you produced a citizen that we loved, that we revered, that we respected, and I refer to the late Honorable Champ Clark, that great loser. We loved him; we respected him; we hoped at one time to see him President of the United States, but fate willed otherwise; yet he is respected and loved in our state.

I have always heard it said that you had to show a man from Missouri when you made a statement, and I wish to say that in accepting this kind invitation of His Excellency the Governor and the Mayor of the City of St. Louis, when we came here to hold our deliberations, we knew that when you extended this invitation that you were ready to show us. I thank you.

CHAIRMAN BAILEY: This association's influence has reached beyond the United States. We have representatives here today from other countries. At this time I want to ask Mr. Juan G. Gallardo, the Treasurer of Porto Rico, to say a few words.

MR. JUAN G. GALLARDO (Treasurer of Porto Rico): Mr. Chairman, ladies and gentlemen: It is a privilege and a high honor for me to be present at this meeting today, as representative of the government of the Island of Porto Rico.

In the year 1920, while I was Municipal Commissioner of Finance of the city of San Juan, it was my good fortune to accompany the late Hon. José E. Benedicto, then Treasurer of Porto Rico, to a similar convention held in Salt Lake City, Utah. Mr.

Benedicto, whom some of you gentlemen will remember, has since passed away.

Before proceeding, I wish to acquaint you with my attitude at this convention. I have not come here for the purpose of making any suggestions upon the matters which will come up for discussion at these conferences, or to present to you any program of reform of existing methods of taxation, and much less as an exponent of any novel scheme to perfect our present system. I am here merely as a listener; that I may learn what others of maturer age and experience and higher endowments have achieved through constant thought and study toward the solution of the ever-perplexing problems of taxation. Taxes, as we all know, are not a voluntary payment or donation, but an enforced contribution exacted pursuant to legislative authority in the exercise of the taxing power, for the support of government and for public needs, and the citizen pays from his property the portion demanded, in order that by means thereof he may be secured in the enjoyment of the benefits of organized sciety. On the other hand, taxpayers are entitled to protection and the legislative bodies should not exercise their power of taxation to impose taxes that are unwise, inequitable or oppressive, but only those that are equal, uniform and based upon actual values.

And now, taking advantage of the opportunity offered me through the courtesy of the chairman of this meeting, and departing from the subject of taxation for a moment, I will say a few words about the Island of Porto Rico.

The Island of Porto Rico, as you know, has been for twenty-six years under the control of the United States of America, as a result of the Spanish-American war.

The total area of Porto Rico is 3,606 square miles. In shape it is almost a perfect parallelogram, its length from east to west being 100 miles, and its width from north to south about 35 miles.

The population of this island in 1899 was 953,243, and according to the U. S. Census of 1910, was 1,118,012. The present population, according to the census of 1920, is 1,299,809.

The progress achieved throughout the quarter of a century of American regime has been simply amazing, and, as much as I should like to, I have not sufficient time to go into the details of this remarkable development. As an illustration, I will point out to you one item in the advancement of our economic life. In the year 1902, the public wealth of the Island amounted to $96,000,000, whereas the aggregate assessed valuation of real and personal property in the Island, revised to June 30, 1924, amounted to $312,000,000.

Our system of taxation, fundamentally, is practically the same as that of the United States, save that our rates are, as a rule, much lower.

The highest tax assessed on real and personal property for the present fiscal year is 2.09% for the city of San Juan, the Capital of the Island.

Taxes are assessed and levied under our local income, property and excise tax laws, which are more or less adaptations of your laws. In the drafting of taxation laws and their subsequent amendments, we have followed the trend of similar legislation in the United States, in so far as applicable to local conditions.

I may add that we are confronted with the same problems and difficulties that you have in the proper application and enforcement of taxation laws, and particularly the income tax law, with its difficult interpretations and intricate procedure.

I hope that the matters that will come up for discussion at this conference will be enlightening and productive of beneficial results to all concerned, and I feel sure that when we return home it will be with a better knowledge and clearer understanding of the science of taxation and its problems, as expounded at this convention.

So far as I am concerned, I wish to say that if I should succeed in making useful application of the valuable information obtained here toward the betterment of our present system of taxation, my purpose in attending this convention will have been accomplished, and Porto Rico will have marked a new step along the path of its steady progress under the glorious flag of the United States of America.

I thank you.

CHAIRMAN BAILEY: We also have a gentleman in our midst from Canada, and I should like to ask Mr. L. I. McMahon, of Montreal, to come forward and give us a few remarks.

MR. L. I. MCMAHON (of Montreal, Quebec): Mr. Chairman, ladies and gentlemen: If one in his own land were called upon to respond to such a welcome as we have received here this evening, it would be an unusual privilege indeed, but coming as a stranger into a land that is not his own, and receiving such a welcome, it becomes a signal honor, one that I fully appreciate, and the country that I represent on this occasion will fully appreciate when I report back just what has occurred. I can return in a sense the courtesy that has been extended to me and the country that I come from, inasmuch as at the Canadian tax conference held in the City of Montreal last week a resolution was passed on Friday as follows:

> "Resolved that this convention, the Canadian Tax Conference, request that Mr. L. I. McMahon convey to the annual convention of the National Tax Conference of the United States, at St. Louis, Missouri, the greetings and the best wishes and successes of the Canadian tax conference." (Applause)

When His Worship told of the marvelous things that St. Louis did, I was amazed, but then when I thought that we have one thing in the little Province of Quebec, from which I come, that he does not have, and that you in St. Louis do not have, something which I think a great many would gladly exchange for all that he has told us, I felt quite proud.

I think we enjoy a freedom and liberty there that might well be the envy of the world. (Applause) I say that, and I think rightly, because we are told so, by the numerous visitors that come to our city. They tell us that they have theoretical freedom here, but they practice it with us.

I am very sorry indeed that His Worship has gone, because I was told only today that Missouri or St. Louis was wondering where they could get a considerable amount of money for the purpose of good roads, and I was going to suggest to him that just as we—four-fifths of our province being the descendants of the early French settlers, the same as the descendants here—they might go back to the ideals of freedom as they know them and understand them, and might allow a man to develop his character as God saw fit.

I am not suggesting anything to you directly, but I am expressing what the people of the Province of Quebec think on this particular subject. They believe a man cannot be made good by law, that is, man's law—legislation—but they do believe a man who properly practices the laws of God can be a good citizen and enjoy himself, can be as good as any other and possibly a little better. We have far less drunkenness than they have anywhere in the world, as far as I know; but that is simply their view.

What I was thinking was that the Mayor might abolish prohibition in the State of Missouri, and this might be found to be the wherewithal to build the good roads. There are two hundred thousand automobiles from the United States crossing the Victoria bridge into Montreal every day. We have a local provision under which we have derived a great provincial revenue. We have the gasoline tax, and most of these people come in automobiles, so you see the people of the United States are paying an indirect tax to the Province of Quebec, and they are building good roads to the extent of three million dollars a year. Our legislatures in Canada have not got to that stage of diabolical finesse where they tax in the various ways in which you have succeeded here in the marvelous progress of your country. On the principle that prevention is better than cure, we have profited by prevention; we are watching your pitfalls, and the profit that we derive is very great indeed.

Personally, I have attended only one convention, which was last year at White Sulphur, and I derived a great deal of benefit from it. I do not suppose I could have amassed as much experience in a whole lifetime as I got at that convention; so we are here with you again, hoping to learn still more.

Now, it was not my intention to discuss taxation, but merely to thank you for the privilege extended to me to thank His Excellency and His Worship for the welcome that they extended to us, and to me particularly, as a foreigner in your land.

I think the best part of these gatherings are the friendly relations brought about, not only in the matter of taxes, but generally between the two countries. I think world peace lies to a large extent in the amity between this country and the country I represent, and I hope it is only the beginning of a far closer relation than there is even now; and not only will there be that international relationship between the two countries, but that will have an effect upon the whole world.

I know of nothing that could better advance public interest; I know of no public service that any man could devote himself to that would do so much real public benefit as a proper study of taxation and the using of his knowledge and his influence to see that the application of proper tax laws is made and practiced throughout this country.

I thank you once again, Mr. Chairman, for the privilege, and I hope I may be with you on future occasions. I am grateful indeed to His Worship and to the Mayor for the welcome that they extended to us.

CHAIRMAN BAILEY: Mr. McMahon says he will profit by our pitfalls. It seems to me from his explanation he has got one way of profiting from it. Holcomb told me today he was going to Montreal, and I won't say what he was going for, but I know now.

I have enjoyed myself immensely this evening, and this means that I have enjoyed the remarks that have been made by the Governor, the Mayor and others who have spoken. I feel very proud tonight, my friends, in occupying this position. This is the first time I have had the opportunity, since you elected me a year ago, to express to you my feelings for having given me this high calling. I have said to my colleagues that I prized this very highly indeed, and more so than if I had been called upon to be the Governor of my state.

I have been coming to these conferences now for twelve years, and I have enjoyed myself immensely, and I look forward now to the time that we meet again, in September, and I can shake hands with the boys, as they come from all over the United States. I think last year there were forty-two states besides three foreign countries that were represented at the conference, and from the present outlook we will have a greater attendance this year than we had last.

I want to thank you, my friends of the National Tax Association, for the honor that you have conferred upon me in making me your President.

Now, back to business. It is necessary that we adopt rules to govern us during this conference. What is your pleasure?

Secretary A. E. Holcomb: Mr. Chairman, perhaps before we proceed I might make one or two interruptions. It is requested that the local committee be informed of the names of the ladies who are present. It is quite important that that information be furnished, and therefore you are requested to leave the names of the ladies at the registration desk.

For the information of those who are interested—and we all are—I have been informed that we have now registered three hundred persons, representing forty states, the District of Columbia, Porto Rico, and Canada, which is quite a large registration for the first evening. Undoubtedly quite a few of you have not registered, and we wish to impress upon you the desirability of registering.

Mr. Chairman, acting in accordance with our usual procedure, I shall read the rules which have been adopted in the past, with such minor changes as experience has demonstrated to be desirable. It is quite important that the rules be plainly stated and be thoroughly understood, so that we may proceed with the proper sort of relationship to the subject and to one another that we need, to avoid confusion.

The rules, then, which I shall read, and which I shall take the liberty of moving for adoption, are as follows:

RULES

The program as printed and distributed is adopted and shall be followed, with such modification as may be required by reason of absence, vacancies, or other causes.

The usual rules of parliamentary procedure shall control.

Each speaker shall be limited to twenty minutes for the presentation of a formal paper. He shall be warned two minutes before the expiration of such period. The time of such speaker may be extended by unanimous consent of those present.

In general discussion each speaker shall be limited to seven minutes, and such time shall not be extended. No person shall speak more than once during the same period of discussion until others desiring to speak have been given opportunity to do so.

Questions addressed to speakers shall be propounded through the chairman of the session.

VOTING POWER

The voting power of the conference upon any question involving an official expression of opinion on the subject of taxation shall be vested in delegates in attendance appointed by governors of states, by universities and colleges or institutions for higher education, and by state associations of certified public accountants. No person shall have more than one vote by reason of his appointment as a delegate from more than one source.

The voting shall be by ayes and nays, unless a roll call be demanded by request of at least three delegates coming from different states, whereupon a

roll call shall be had and each state, province and possession shall be entitled to cast one vote, such vote to be determined by a majority of the delegates present at the meeting from such state, province and possession. On all other questions the voting shall be by vote of all in attendance. The receipt of reports made to this conference by committees of the National Tax Association shall not be considered as expressing its opinion on the subjects treated.

COMMITTEES

The following committees shall be appointed:

(a) A committee of three on credentials, to be appointed by the chairman, who shall designate the chairman of such committee.

(b) A committee on resolutions, composed of one delegate from each state, province and possession, selected from among the delegates; but in case of the non-attendance of any such, any person from such state may be appointed. The chairman shall designate the chairman of this committee, such person to arrange for its organization.

RESOLUTIONS

All resolutions involving an expression of opinion of the conference on the subject of taxation shall be read to the conference before submission to the committee, and shall be immediately referred, without debate.

Mr. Chairman, I move the adoption of these resolutions.

(Motion duly seconded)

Mr. Philip Zoercher (of Indiana): I second the motion.

Chairman Bailey: You have heard the rules as they have been read by our secretary, and the motion to adopt, which has been seconded.

Mr. Martin Saxe (of New York): I should like to ask whether it is in order at this time to offer any amendment to the rules.

Chairman Bailey: Yes, sir.

Mr. Saxe: Then I should like to suggest, Mr. Chairman, with respect to the rule relating to the official delegates who may vote upon questions which it is desirable to submit to the association, that that be amended, so as to provide for the preparation of an official roll at the first session of the conference. Sometimes questions arise, and as the report of the committee on resolutions generally comes up on the very last day, members are anxious to get away, and there is a question as to who the official representatives are. I should like to have the secretary's view with respect to the expediency of that suggestion.

Secretary Holcomb: The point is, as I take it, in order to avoid confusion that might arise?

Mr. Saxe: Exactly; if a question comes up that might lead to some difference of opinion and close voting.

SECRETARY HOLCOMB: Well, the obvious suggestion that occurs to me is that we have provided for a credentials committee, and would that not be sufficient on that point? It is not a very likely thing to happen and with a credentials committee ready to certify at any time upon occasion, it seems to me that that would be sufficient to meet all reasonable conditions, without the necessity of specifying that this credentials committee should prepare a roll. The roll is on the registration cards, and it is perfectly possible for the credentials committee, with such assistance as may be furnished by the secretary, to arrive at a conclusion as to the eligibility of any delegate to vote.

MR. SAXE: Would it not be advisable, then, to have the secretary furnish the credentials committee promptly after the organization of the conference with a list of official delegates?

SECRETARY HOLCOMB: It is quite desirable, but is it necessary to put it in this resolution?

MR. SAXE: I am asking the secretary. If he thinks it can be done without amendment of the rules, I will not press my motion, but I recall that only last year we had a situation, and it was a little embarrassing, because we did not know exactly who the official delegates were. It may arise again, and the very purpose of rules is to provide for exigencies as they arise. I will not press it, however, if the secretary does not think we need it.

CHAIRMAN BAILEY: I think you probably understand that these rules are to govern the conference, and not the association. We have our by-laws.

MR. SAXE: I understand that perfectly.

CHAIRMAN BAILEY: Now, then, if you all register, we have the list, and should such an occasion arise, we can easily take care of it, I take it.

MR. SAXE: But you have not got it in the shape of a list. What you have is a collection of registration cards. Now, from your registration cards you must pick out the official delegates, and if you let that go until a division occurs, it means taking some time.

CHAIRMAN BAILEY: I feel, however, that we shall be safe in leaving that in the hands of the credentials committee.

MR. SAXE: I won't press the matter, then, Mr. President.

CHAIRMAN BAILEY: Any other remarks upon the adoption of these rules? Are you ready for the question?

Call for the question.

Ayes and Noes.

CHAIRMAN BAILEY: The rules are adopted.

By virtue of these rules, it becomes my duty to announce the committee on credentials, and I take great pleasure in naming Mr. F. N. Whitney of New York, as Chairman, Mr. Ross Hammond of Salt Lake, and Mr. E. P. Tobie of Rhode Island.

A resolutions committee is authorized in these rules. I should like to ask Mr. C. J. Tobin of New York to act as chairman. If each of the states and provinces that are here represented will hand in the name of the party that they want to serve on this committee, the chairman will take pleasure in naming him as a member of this committee. I urge, however, that this be done immediately. Turn these names over to Mr. Tobin or Mr. Holcomb, in order that this committee may get busy. This is the important committee of the association, and they have considerable to do, and I hope they may be able to get busy at once. Mr. Tobin will take the matter in hand and will announce the times and places of the meetings of this committee.

I should like to divert for just a moment and now turn to the members of the National Tax Association. All of you who have been attending regularly here know that at this time, or early in our meetings we appoint a nominating committee. It will be necessary that we nominate a President, Vice-President, Secretary, and three members of the Executive Committee. I should like to take this opportunity of calling this to your attention and ask your pleasure upon this point.

MR. T. S. CADY (of Missouri): Mr. Chairman, I move you that a nominating committee of five be appointed, and that there be included upon that committee the ex-presidents of the association present.

CHAIRMAN BAILEY: Members of the National Tax Association, you have heard the motion, that there should be a committee of five on nominations, to be appointed by the chair. Do I hear a second to that motion?

(Motion duly seconded)

CHAIRMAN BAILEY: Are there any remarks?

(Ayes and Noes)

CHAIRMAN BAILEY: The ayes have it. The chair will name Mr. Samuel Lord of Minnesota as chairman of this committee. Mr. Lord is an ex-president. I think there are no other ex-presidents present—Mr. Henry F. Long of Massachusetts, Mr. Douglas Sutherland of Illinois, Mr. Charles E. Hall of Nebraska, Professor C. C. Plehn of California, which gentlemen will please act as this committee.

What is your further pleasure?

SECRETARY HOLCOMB: Mr. Chairman, I assume you intend that we proceed with the program. Upon the program, as No. 2, you will find a summary of recent tax legislation. I merely arise to say that that interesting review has been prepared by Mr. Hannan of the state library of New York. We owe decidedly sincere thanks to Mr. Hannan for what he does for us annually. I think those of us who have occasion to deal with comparative tax laws and with legislation must find these reviews valuable; but however valuable and however interesting they are for the readers, or the ones who study them, they are not particularly interesting to read on an occasion like this, so that in the past I have attempted, as best I might, to summarize some of the high spots of his elaborate statements of the course of legislation on taxation. This year's paper arrived since I reached the city, and it has been utterly impossible for me to give it sufficient time to analyze it or to give you anything more than a very brief and labored reading of facts of that sort. I was going to suggest that the paper might be put in the proceedings without reading, or that if I could find time to note some of the more outstanding points, I should be pleased to do so at some occasion during the progress of the week.

CHAIRMAN BAILEY: I happen to know that this digest did not reach here until after five o'clock this evening, and if there is no objection, we will ask Mr. Holcomb to give a summary at a subsequent meeting. It is very interesting and I should like to hear it and not merely put it in the record.

MR. E. F. COLLADAY (of the District of Columbia): I would like to move that the summary be printed, unless it involves too much expense.

SECRETARY HOLCOMB: You mean as a separate reprint from the proceedings.

CHAIRMAN BAILEY: In the volume?

MR. COLLADAY: That will be done; that is always done. As there is quite a delay in getting out the volume, if the expense is not prohibitive, I move it be printed as a separate pamphlet. I do not want to press that motion if it involves undue expense.

CHAIRMAN BAILEY: If there is no objection, we will leave that to Secretary Holcomb. Holcomb is mighty stingy, though, I will tell you that.

SECRETARY HOLCOMB: I appreciate the suggestion, Mr. Colladay.

MR. COLLADAY: I am not making that remark, Mr. Secretary, by way of criticism, but it occurs to me that if the members could have the benefit of this summary in the ensuing weeks, at the time that the affairs of the conference are clearly in mind, they would prob-

ably get more benefit from it than when it comes out in the bound volume.

CHAIRMAN BAILEY: I would suggest you leave that until Mr. Holcomb gives you the summary, and then we will decide if we want it or not.

MR. COLLADAY: I will withdraw my motion at present.

[The complete paper submitted by Mr. Hannan is as follows]

REVIEW OF TAX LEGISLATION IN THE VARIOUS STATES FOR 1924

WILLIAM E. HANNAN
Legislative Reference Librarian, New York State Library

There were but few of the states which held legislative sessions in 1924, and hence the constitutional amendments relating to taxation and finance appear of more interest and importance than the statutory changes.

CONSTITUTIONAL AMENDMENTS ADOPTED, 1923

Nothing vitally affecting the general prnciples of taxation was written into any state constitution in 1923. New York adopted an amendment authorizing a bond issue of $45,000,000 to pay a bonus to resident veterans of the world war. Pennsylvania, by an amendment, empowered the legislature to exempt from taxation real and personal property owned, occupied and used by any branch, post or camp of honorably discharged soldiers, sailors and marines. Pennsylvania by a further amendment, authorized a bond issue to the amount of $100,000,000, an increase of $50,000,000 over a former levy, for highway purposes.

CONSTITUTIONAL AMENDMENT DEFEATED, 1923

New York defeated, by a vote of 608,684 to 671,141, a new section to the constitution which would have provided that the debt and tax limits of cities should not be affected by any changes in the system of taxation or in the definition of real estate. The purpose of the amendment was to prepare the way for remedying defects in the present method of taxing public utilities.

CONSTITUTIONAL AMENDMENTS DEFEATED, 1924

Missouri, at a special election held in February, 1924, stood pat on its present tax system, by sending down to defeat four very constructive measures.

One amendment proposed the reorganization of the executive and administrative departments of the state government into not to

exceed twelve departments. At present there are approximately seventy departments, boards, bureaus, commissions and other agencies. An executive budget system was also to be a part of this reorganization plan. The amendment was defeated by a vote of 139,154 to 190,524.

A second amendment dealt specifically with the revenue article of the constitution. It proposed, among other things, to reduce the maximum state levy for general revenue purposes from fifteen cents to ten cents on the $100 valuation; to remove from the tax-exempt privilege the property of cemeteries held for private profit; to exempt from taxation, unless otherwise provided by law, certain property used exclusively for religious purposes; also property and income used exclusively for educational or purely charitable purposes.

It was also proposed to give municipalities authority by charter or by statute to borrow money for the purpose of constructing, acquiring, altering or improving public utilities, the indebtedness thus incurred to be paid exclusively from the income of the public utility. Cities were further to be endowed with power to directly finance special tax bills in order to pay cash to contractors for the construction of streets and alleys. At present such improvements are paid for by special tax bills, at their face value, with the result that the cost of such improvement is, on the average, at least twenty-five per cent more. It was stated that this provision would enable the cities to save millions of dollars on local improvements. The proposition containing these various measures, however, was defeated by a vote of 139,704 to 193,317.

A third amendment proposed to give the legislature the option of taxing all property in proportion to its value, or of making a classification of such property for the purpose of taxation, the rate on each class to be uniform. With this provision was coupled a measure which subjected motor vehicles not only to license taxes but also to registration fees. It was also made clear that such vehicles might be subjected to general property taxes. The amendment was defeated by a vote of 113,123 to 216,985.

A fourth amendment proposed to do away with the present ex-officio state board of equalization. If the measure had been adopted the general assembly would have had the power to create a state tax commission. This proposition was also defeated by a vote of 121,028 to 203,711.

It is interesting to note the reasons given for the defeat of these important measures: (1) Agricultural depression throughout the state. (2) Lack of a publicity fund to put on a campaign of education in the interest of the proposed amendments in order to overcome the inertia and apathy caused by agricultural conditions. (3) The fear of a certain element of the voters that the proposal

to classify property for purposes of taxation would prove too favorable to the corporations. With this fear was coupled a lack of faith in the ability of the legislature to work out a proper statutory method of classification. (4) Lack of interest and indifference on the part of the rank and file of the voters. It is to be noted that only about sixteen per cent of the voters participated in this important special election.

A plebiscite on the questions of eliminating chewing gum, abolishing ice-cream sodas, or prohibiting the use of cigarettes, would have called forth a vote more nearly representative of the total vote of the state than the one cast on these measures so constructive in character and so full of promise for the fiscal and administrative well-being of the state.

Referendums on Bonds and Income Tax, 1923

New York

The voters at the general election in November, 1923, overwhelmingly adopted the proposition authorizing the issue of state bonds up to $50,000,000, the proceeds to be expended for the construction of state hospitals and charitable institutions for the state's unfortunates.

Oregon

At a special election held November 6, 1923, the voters adopted an income tax law which had been passed by the legislature but which had the referendum invoked against it. The tax is based upon the entire net income of every resident or non-resident, individual and corporation doing business in the state and at the following rates: 1% on the first $1,000; 1¼% on the second $1,000; 1½% on the third $1,000; 1¾% on the fourth $1,000; 2% on the fifth $1,000, and increases ½% on each $1,000 thereafter up to $12,000. There is an exemption of $1,000 in the case of single persons and $2,000 for the head of a family or married person living with husband or wife and a further exemption of $400 for each dependent under 18 years of age or who is incapable of self-support. In the case of a fiduciary an exemption of $1,000 is allowed and of $2,000 in the case of a non-resident corporation. Certain civic, charitable, educational and other organizations are exempt. The income tax may be paid in four installments, extending over a period of nine months. The proceeds are to be credited to the general fund of the state, it being the expressed intention of the law that the revenue derived from the taxation of incomes shall reduce by corresponding amounts the direct tax levy which would otherwise be laid on the general property of the state.

A measure seeking the repeal of this income tax law is to be submitted to the voters, by initiative petition, at the general election in November, 1924.

Constitutional Amendments to be Voted Upon, 1924

Thirteen states will vote upon proposed constitutional amendments at the general election in 1924. The states and the amendments are as follows:

Arkansas

This state proposes to require that the fiscal affairs of counties, cities and incorporated towns shall be conducted on a sound financial basis. All officials of such local units are forbidden, by the amendment, to make any contracts or issue any warrants in excess of the revenue from all sources for the current fiscal year. The penalty for any violation of this provision is a fine of not less than $500 nor more than $10,000, and, in addition, removal from office.

California

Six amendments are proposed by this state. One would increase the rates on certain public utilities and on insurance companies (except certain cooperative insurance companies), and on banks and franchises. The tax rate is applied to the gross receipts. On railroads the rate is 7%; on street railways 5¼%; on various car companies 5¼%; on express companies 1%; on telegraph and telephone companies 5½%; on companies engaged in the transmission or sale of gas or electricity 7½%. Each insurance company or association, except county fire insurance companies, would pay an annual tax of 2.60% upon the gross premiums. Banks would be assessed at the rate of 1.45% on the value of their shares. All franchises would be taxed at the rate of 1.6% on their actual cash value.

The rates proposed on the public utilities are now in effect, by statutory provision, and have been since 1922. These statutory rates are now included in this constitutional amendment, in order that they may not be superseded by a different rate.

The second amendment would exempt from taxation property not to exceed $50,000 in value in any one county, used exclusively as air-ports or aviation fields and which are under the control of the United States.

The third amendment would levy a poll tax of not less than $5 on every made inhabitant of the state over 21 years of age and under 50 years of age. The word "alien" is omitted in this amendment and the maximum age limit is reduced from 60 to 50 years. The amendment would exempt veterans from the tax and persons who pay a real or personal property tax amounting to at least $5. The proceeds of the tax are to be paid into the state school fund. Formerly such taxes were paid into the county school fund in the county where collected.

The fourth amendment would require that the taxes levied upon

personal property for any current tax year, where the same is not secured by real estate, shall be computed at the tax rate levied upon real property for the preceding tax year.

The fifth amendment would exempt all public utility bonds issued by the state from taxation.

The sixth amendment would authorize the legislature to provide for the assessment, levy and collection of taxes upon all notes, debentures, shares of capital stock, bonds, solvent credits or mortgages, not now exempt from taxation under other provisions of the constitution, in a manner, and at rates, or on a basis of value, different from other property subject to taxation, such taxes to be in lieu of all other property taxes upon such property and to be equitably distributed to the county, municipality or district in which such property is taxed. The rate imposed on such securities is not to exceed that on other property in the state.

Colorado

A bond issue is proposed not to exceed $8,000,000, for the payment of adjusted compensation to resident veterans of either sex of the wars to which the United States was a party since 1861, the amount of compensation not to exceed $15 for each month of active duty.

Florida

It is proposed to amend the section of the constitution relating to revenue which provides for a uniform and equal rate of taxation by introducing the principle of classification as to intangible property, this tax, not to exceed 5 mills, to be exclusive of all other state, county, district and municipal taxes.

Florida would also add a new section to the constitution which would provide that no tax upon inheritances or upon income of residents or citizens of the state shall be levied by the state or under its authority. The amendment further provides that there shall be exempt from taxation to the head of a family, residing in the state, household goods and personal belongings to the value of $500.

Kansas

An amendment is submitted that would provide for the classification and taxation, uniformly as to class, of mineral products, money, mortgages, notes, and other evidence of debt.

Minnesota

Three amendments are proposed. One would authorize the legislature to levy an excise tax upon gasoline or motor fuel oils or on the business of dealing in, selling or producing such oils, to be used for propelling motor vehicles on the public highways

of the state, the proceeds of such tax to be placed in the trunk highway fund of the state.

The second proposes a new article to the constitution which would authorize the legislature to enact laws for the purpose of encouraging and promoting forestation and reforestation of lands, both public and private, irrepealable provisions to be included, for definite and limited taxation of such lands during a term of years and for a yield tax at the end of such term upon the timber and other forest products.

The third proposes a further new article to the constitution which would permit the state and its political subdivisions, when authorized by the legislature, to contract debts and pledge the public credit for any work to prevent or abate forest fires, including the compulsory clearing and improving of wild lands, whether belonging to the public or privately owned, and the payment against state lands of the value of all benefits conferred and the payment of damages sustained in excess of such benefits.

Missouri

This state proposes an amendment which seeks to authorize an additional bond issue of not to exceed $4,600,000, for completing the payment of the soldiers' bonus.

Montana

An amendment would provide for a bonus to veterans, residents of the state, who served in the world war for a period longer than two months, the maximum payable to each veteran not to exceed $200. The amendment carries a bond issue of $4,500,000. To pay for this bond issue there shall be annually levied a tax not exceeding one mill on all property in the state subject to taxation.

North Carolina

This state proposes three amendments. One provides that loans made for the acquirement of homes not exceeding $8,000 shall be exempt from taxation on 50% of the value, when the term of the loan is not less than one nor more than thirty-three years, and if the holder of the note resides in the county where the land lies when listed for taxation. The interest rate is not to exceed 5.5%. When the notes are held and taxed in the county where the home is situated, the owner shall be exempt up to 5% of the value of the notes.

The second amendment provides that all acts of the general assembly heretofore passed, providing for payments into any sinking fund for the retirement of bonds shall be irrepealable after the issuance of such bonds, thus providing for the inviolability of sinking funds.

The third amendment would put a limitation upon the state debt, so that no new debt can be contracted, except to supply a casual deficit, or for the suppression of invasion or insurrection, to an amount exceeding in the aggregate, including the present debt and deducting certain railway stock owned by the state, 7.5% of the assessed valuation of the taxable property in the state.

Oklahoma

An amendment is submitted which provides for a state levy, on an advalorem basis, sufficient to raise a fund for the benefit of public schools of at least $15 per annum for each child in daily attendance.

Oregon

This state proposes an amendment which would permit indebtedness to be incurred to an amount not exceeding three per cent of the assessed valuation of all property in the state, for the purpose of creating a fund to be loaned or paid to persons who served in the war department and to World War veterans.

Wisconsin

It is proposed to amend the constitution so that the state may appropriate moneys for the purpose of acquiring, preserving and developing the forests of the state.

Wyoming

An amendment is proposed that would add to the taxable minerals, copper, iron ore, petroleum, crude oil, and natural gas. It further provides that in addition to the taxing of these various minerals, there shall be levied a severance license tax, based on the actual value of the gross output.

CONSTITUTIONAL AMENDMENTS TO BE VOTED UPON, 1925-1926

Georgia

This state proposes to add to its list of property exempt from taxation industries erected after January 1, 1924, especially those erected for the manufacture or processing of cotton, wool, linen, silk, rubber, clay, wood, oil, metallic or non-metallic mineral or combination of the same; milk or cheese plants; or for the production or development of electricity, the building and equipment to be exempt from all county, town or city advalorem taxes for a period of not to exceed five years from the date of the beginning of such building. It is provided, however, that the exemption from such property shall be subject to the approval of a majority of the electors voting in such county, incorporated town or city which proposes the exemption.

Mississippi

Mississippi proposes an amendment which provides that taxes shall be levied upon such property as the legislature shall prescribe, and be uniform upon the same class of property within the territorial limits of the authority levying the tax. Property shall be assessed and all exemptions granted, by general law. Taxes may also be imposed on privileges, excises, occupations, incomes, legacies or inheritances, which taxes may be graduated and progressive; and reasonable exemptions may be provided. The legislature is authorized to provide for a special mode of assessment for railroads or other public service corporations, or for other corporate property generally, or for particular species of property belonging to persons, corporations, etc. not situated wholly in one county; but all property is to be assessed at its true value and taxed in proportion thereto.

Constitutional Amendments to be Submitted to the Legislature, 1925-1926

The states of Indiana, Pennsylvania and Virginia will again submit to their respective legislatures, for a second time, for consideration and passage, certain constitutional amendments on taxation. The legislatures of Indiana and Pennsylvania will act on their propositions in 1925 and the legislature of Virginia in 1926. The proposed amendments are as follows:

Indiana

This state proposes to levy and collect an income tax from whatever source derived.

Pennsylvania

An amendment is proposed which would, in the case of inheritance taxes, provide exemptions as to subjects or amount, by general laws.

Virginia

This state would exempt the wives and widows of veterans of the war between the states from the payment of the state poll tax, as a prerequisite to the right to register or vote.

A second amendment would permit the legislature to make appropriations out of the state treasury payable at any time within two years and six months after the end of the legislative session at which the law authorizing the same is enacted, instead of the present maximum of two years.

Referendum Measures to be Voted Upon, 1924

Illinois

The voters are to decide at the general election in November, 1924, as to whether the state shall issue bonds to the amount of $100,000,000 for the construction of a state-wide system of durable, hard-surface roads, the bonds to be payable within thirty years from date of issue.

Massachusetts

Massachusetts, in the legislative session of 1923, passed a bill providing for a tax of two cents on each gallon of gasoline; but the referendum prevented its going into effect. The vote on the referendum will be had in November, 1924.

Proposed Constitutional Conventions

New Hampshire will vote at the general election in November, 1924, upon the proposition of revising the state constitution.

South Dakota will submit the question of holding a constitutional convention to the electors at the general election in 1924.

Tennessee is to vote at the general election in 1924 on delegates to a state constitutional convention.

Special Tax Investigating Commissions

In Maine, the board to investigate the tax-exemption laws, appointed in 1923, is engaged in the collection of statistics and in studying the problem.

Massachusetts made provision for a special tax commission to consist of five persons appointed by the governor. The commission is to investigate and report as to laws relative to the taxation of national banks, savings banks and trust companies, with a view to bringing about a more uniform and equitable system of taxation of such banking institutions as are not competitive. The commission is authorized to employ necessary assistants and incur such other expenses as may be needed in conducting the investigation. A report is to be made and filed with the clerk of the House of Representatives, not later than November 15, 1924. The commission is also required to propose in bill form the necessary legislation.

New Jersey has authorized a special commission of ten members to study the question of motor vehicle taxation in all its phases and report thereon, with recommendations, to the next legislature. The commission is to contain one member of the senate, appointed by the president and one member of the assembly to be appointed by the speaker. The commissioner of motor vehicles is to be a member, the remaining members being chosen from various organizations in the state.

In New York the joint legislative commission on taxation was continued and is authorized to examine the systems of state and local taxation, the sources and distribution of state and local revenue, the methods of financing the public school system and the raising, apportionment and distribution of revenue therefor. Twenty-five thousand dollars is appropriated and a report is to be made to the legislature on or before February 15, 1925.

The Oklahoma tax code revision commission has made the state examiner and inspector chairman of the commission. The commission is authorized to investigate all systems of taxation; employ experts, either within or without the state, and to prepare a complete tax code.

Virginia directed the state tax commission to make a study of the income and inheritance tax systems of the federal government and of the several states. The commission is to make its recommendations to the legislature in 1926.

State Tax Administration

Georgia, in extra session, November, 1923, created a department of revenue. The administrative officer is to be known as the commissioner of revenue, appointed by the governor, term six years, salary $4,000, and removable by governor for cause. The new commissioner is authorized to appoint not to exceed six deputies, whose duties shall be to look after the delinquent taxes due the state, special delinquent license taxes, special or occupation taxes, automobile taxes, chauffeurs' license taxes, gasoline sale taxes and stamp taxes on cigars and cigarettes, and to check up estates subject to inheritance tax. The tax collectors of the state are to cooperate with the department of revenue in supplying information as to taxpayers who are delinquent.

Georgia, at the same extra session, passed an act to create and establish the department of audits and accounts, the head of the department to be an experienced auditor and accountant, appointed by the governor; term four years; removable for cause; salary $4,000.

The state auditor is to devise and establish correct methods for the collection and payment of state funds and to make proper protection for all state property; to examine all financial transactions of each state department, institution or agency and to maintain a current check and an annual audit of all the fiscal affairs of the state and its departments; ascertain whether such departments are being handled in an efficient and economical manner and make report to the governor and legislature as to any excessive cost of operation or maintenance of any of the state's agencies; make special examination into the manner in which the funds of the state are kept and where deposited and as to whether

or not any interest is being paid and the amount of such interest. The state auditor shall also investigate the different systems and methods now used by any agency of the state in handling their financial affairs and in the purchase of supplies and material; and also the practicability of establishing a central purchasing agency for state supplies.

Kentucky repealed a section which authorized the state tax commission to reassess property and equalize taxation, in case the county board of supervisors failed to carry out all orders of the state tax commission.

Kentucky, by an amendment, provided that the state board of equalization and assessment shall convene at the state capitol on the second Monday in March, formerly January, for the purpose of equalizing the assessments among the different classes of property and among individual companies, corporations and associations. The state tax commission is authorized to increase or decrease the aggregate assessed valuation of any class of property or any item in such class. The state board of equalization and assessment shall fix the assessment of all property at its fair cash value.

New York authorized the state tax commission to collect financial information relative to taxation in each political or civil subdivision of the state. The local officers are required to furnish such information, when the state tax commission so requests, for any preceding fiscal or financial year. The tax commission is required to certify to the comptroller, on his request, any of such information, in whole or in part.

Virginia did away with the former state tax board composed of the governor, the auditor of public accounts and the chairman of the state corporation commission. In its place is created an ex-officio state tax ocmmission, composed of the auditor of public accounts, the second auditor and the state treasurer. Increased power is given the tax commission in administrative matters.

Local Tax Administration

Louisiana made an increase in the salaries of the assessors in a number of the counties of the state.

New Jersey, by a new law, provided that in municipalities governed by an improvement commission, the boundaries of which are co-extensive with the municipality, all assessments shall be made by a board of assessors consisting of three citizens who are residents of the municipality, to be appointed by the mayor, with the consent of the commission; term of office three years. The new law abolishes the office of municipal assessors in every municipality which is governed by an improvement commission.

New Jersey, in a further act, provided that in every township

of the state governed by an improvement commission, the boundaries of which are co-extensive with the boundaries of such township, the collector of taxes is to be appointed by the mayor, with the consent of the improvement commission, for a term of three years.

Exemption from Taxation

Maryland provided that all vessels over 500 dead weight tons, registered at any port in the state and American owned and regularly engaged in foreign or coastwise commerce, shall be exempt from taxation, for both state and local purposes, until December 31st, 1935.

Maryland, by an amendment, added organizations of disabled American veterans of the world war, whenever the property of such organization is used exclusively for homes, clubs, asylums, hospitals and burying grounds, to the list of those exempt from taxation.

Income Tax

Massachusetts amended the income tax law by exempting from the income tax all incomes which do not exceed $1,000 a year. In the case of married persons, if the combined incomes of husband and wife exceed $1,500, the exemption does not apply. The intent of the law is that no tax shall be exacted upon any income which shall reduce the income of the taxpayer, if unmarried, below $1,000, or the combined income of husband and wife below $1,500.

Mississippi made a complete revision of its income tax law. The new law provides a tax upon the entire net income of every resident individual, corporation, association, trust or estate in excess of certain credits. The rate of the tax is as follows: 1 per cent on the first $1,000; 1½ per cent on the second $1,000; 2 per cent on the next $3,000; 3 per cent on the next $5,000; 4 per cent on the next $15,000; 5 per cent on all taxable income in excess of $25,000; a like tax, at the same rate, is imposed upon non-resident individuals, corporations, partnerships, trusts or estates, on all property owned and business conducted by such in the state. The income tax imposed is to be in addition to all other taxes.

Exemptions are, for single individuals, $1,000 and $200 for each dependent. The head of a family or a married individual, living with husband or wife, $2,000; and $200 for each dependent under 18 years of age or incapable of self-support, or a student in school or college.

The exemption in case of a corporation or association is $1,000. The administration of the law is under the exclusive jurisdiction of the chairman of the state tax commission.

New York enacted a new law which allows a reduction of 25% in the personal income tax returns for the calendar year 1924.

New York further amended the income tax law so as to require returns by every taxpayer having a net income of $2,500 or over, if married and living with husband or wife. It is further required that if a husband or wife living together have an aggregate net income of $2,500 or over, each shall make a return unless the income is included in a single joint return.

New York defined the entire net income of business corporations to be the total net income, including all dividends received on stocks and all interest received from federal, state, municipal or other bonds, without deduction for taxes paid to the United States or to any foreign country on either profits or net income and without deduction of any specific amount allowed by any taxing authority.

South Carolina by an amendment provided that income accruing to resident individuals and domestic corporations from other states or territories shall be allowed as a credit against gross income from all sources, provided that an income tax was paid to such other state or territory on such income at an equal or higher rate than prescribed by the South Carolina law. If the rate paid be less, a credit of the amount of income tax paid to such other state or territory shall be allowed.

South Carolina by a further amendment provided that the income tax of foreign corporations and non-resident individuals engaged in the business of manufacturing within the state be computed on such proportion of the entire net income, derived from all sources, as the fair cash value of the real estate and tangible personal property located and actually used in the conduct of the business in South Carolina, excluding certain items, is to the cash value of its entire real estate and tangible personal property used in the conduct of the trade or business wherever located. The tax, formerly paid to the state treasurer, is to be paid to the state tax commission, and the commission shall each month turn over the proceeds to the state treasurer.

Virginia amended the income tax law so as to prohibit the imposition of an income tax on the dividends from the shares of stock of state and national banks, banking associations, trust and security companies.

Inheritance Tax

Kentucky made a general revision. All personal property, wherever situated and belonging to an inhabitant of the state is declared taxable. Transfers made within three years prior to the death of the grantor, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death. Obligations of a contractual nature, payable at or after the death of the decedent, are to be deemed taxable transfers,

unless it shall appear that a consideration equal in value to the amount due was paid during the life of the decedent.

Three broad classes of beneficiaries are designated by the new law. The wife is granted an exemption of $20,000, an increase of $10,000 from the old law. There is a decided change in the rates which, in the new law, are based on the progressive principle. Substantial increases in the rates are to be noted. The New Hampshire flat-rate plan for taxing non-resident estates is incorporated.

The new law greatly strengthens the hands of the state tax commission in the matter of supervision and enforcement. The proceeds are to go, one-half for the use of the ordinary expense of the state and the other half for certain school purposes.

Massachusetts adds a provision which requires that the property and interests which shall pass from a decedent to the same beneficiary and all beneficial interests which shall accrue to such beneficiary are to be united and treated as a single interest, for the purpose of determining the amount of the tax.

Massachusetts struck out the word "actual" and the words "actual market" before the word "value" so that the word "value" stands alone.

Mississippi made a complete revision of its law, basing it on the federal statute. The old law provided for two general classes of beneficiaries. The new law makes no provision for classes of beneficiaries but levies a graduated or progressive tax on the value of the net estate, the minimum rate being one per cent of a net estate up to $25,000, the maximum being 10 per cent on the amount in excess of $1,000,000. It is further provided that the state tax commission shall have jurisdiction of the act.

New York amended the inheritance tax law by providing that in the case of tenancies by the entirety, the surviving tenants shall be taxable only on one-half of the value of the property transferred.

New York further provided that whenever a tax on a transfer, dependent on a contingency, has been determined at the highest rate, the executors or trustees, in lieu of paying the total amount so determined, may elect to file a bond to secure the payment of the difference between the tax on such transfer, which would be due, if the contingency or condition had happened at the date of the appraisal of the estate, and pay in cash the balance of the tax so determined.

South Carolina amended the law with respect to the duties of executors and administrators. The time for filing inventory, by the administrator or executor, is reduced to one month after appointment, formerly three months.

Virginia amended the inheritance tax law materially. The ad-

ministration of the law, with respect to the determination and collection of the tax, is placed with the auditor of public accounts. The tax is to be laid on the "actual" value of the property, formerly "market" value. Rates for class A heirs are not changed. In the case of class B the rates remain the same but the base is changed. The law expressly provides that the total tax on all the shares of the beneficiaries of an estate shall ont exceed $4,000,000 in the aggregate. Formerly the proceeds from the inheritance tax went for school purposes. The amended law gives one-third to the state general fund, one-third to the general school fund and one-third to the county and city in which tax is collected, for school purposes.

Corporations

Georgia increased the base and the rate of taxation for corporation franchise taxes.

Kentucky provided that the individual stockholders of a corporation, at least 75 per cent of whose total property is taxable in Kentucky, shall not be required to list their shares for taxation, so long as the corporation pays taxes on all its property in the state.

Kentucky further provided that corporations shall make a verified report to the state tax commission, giving the names and addresses of the residents of the state who hold shares of stock and outstanding bonds in such corporations. Such report shall also show the transfers of its stocks or bonds by residents of the state to non-residents.

Mississippi imposed a privilege tax of one-half of one per cent upon the right of residents of Mississippi to own shares of the capital stock of non-resident corporations, such tax to be collected at the time and in the manner that other privilege taxes are collected and to be computed on a basis of the actual market value of the stock at the time the shares are returned for assessment; provided that the par value of the stock shall be taken as *prima facie* evidence of the actual value. Where the stock has no par value, it shall have a *prima facie* value, for the purpose of assessment, of $100 per share. Such shares are exempted from ad-valorem taxation, the privilege tax being in lieu thereof. A penalty of $25 per share is imposed for failure to return for taxation any shares subject to the tax.

New York amended the law in relation to franchise taxes, by making a change in the dates when such taxes are due and payable.

New York also provided that in case of suit for taxes, if the delinquent is a foreign corporation, its authority to do business in the state shall be revoked.

South Carolina increased the penalty in the case of any cor-

poration which fails to make the reports and pay the fees prescribed.

Virginia increased the franchise tax rate on capital stock in excess of $1,000,000.

Banks

Kentucky repealed the former law and enacted a new measure which lays an annual tax of 50 cents on each $100 of the fair cash value of the shares of stock of state banks and trust companies and national banks doing business in the state, the tax to be paid to the sheriff of the county in which banks are located, and to be in lieu of all other taxes upon such shares by the state, the proceeds to be for state purposes only.

It is further provided that the county in which the bank or trust company is located may impose a tax of not to exceed 20 cents on each $100; a city or town may impose a like tax of the same amount, and a school district may impose a tax of not to exceed 40 cents for school purposes.

Massachusetts, by an amendment to the section in which such banks are allowed to elect to be taxed upon their net income, to an amount equal to 12½ per cent, provided for a minimum tax, which shall not be less than 6 per cent of the dividends paid during the previous calendar year. This amendment will prevent such banks escaping the payment of taxes when there is no net income.

Massachusetts also provided that any trust company, upon the filing of a request with the commissioner of taxation, may be taxed upon its net income to an amount equal to 12½ per cent thereof, but the total amount of tax shall not be less than two-fifths of one per cent of the total amount of its capital stock, surplus and undivided profits.

New York, by amendment, struck out the penalty of $100 for every day of delay in the payment of tax and provided that the penalty shall be a sum equal to 5 per cent of the tax and an additional sum equal to 7 per cent per annum, calculated upon the amount of the tax from the day upon which the tax became due and payable to the date of payment.

Virginia legalized and ratified all taxes paid or assessed on shares of banks, to the extent that such taxes are valid under state and federal law.

Assessment

Georgia, at the extra session, provided that the comptroller-general and state tax commissioner shall cause returns of the public service and utility corporations to be equalized with the returns of real estate, in order that the percentage of actual values returned by the corporations shall be as great as the percentage of actual values returned by the land owners of the state.

Kentucky provided that the tax for state purposes on all live stock and domestic fowls shall be fifty cents on each $100 of assessed value. Formerly the tax on this class of property was not at a greater rate than ten cents on each $100 of assessed value. Live stock and domestic fowls are declared exempt from taxation for local purposes. Formerly this class of property was taxed for local purposes at the same rate fixed for the taxation of other property.

Kentucky removed from the list of subjects taxable by a county, city school or other taxing district, all live stock, domestic fowls, the capital stock of building and loan associations and bank deposits, these to be subject to taxation for state purposes only. The same is true of manufactured and agricultural products in the hands of the producer or in the hands of any agent of the producer, to whom such products have been conveyed or assigned for the purpose of sale.

Kentucky provided for an annual advalorem tax for state purposes of 30 cents (formerly 40 cents) on the $100 value of all real estate and of 50 cents on each $100 value of all property other than real estate, and other than the deposits in any bank, trust company or national bank. Upon this latter class a tax at the rate of one-tenth of one per cent is to be paid.

Louisiana made certain bonds a separate class for purposes of taxation, the same to be assessed at 10 per cent of their market value. Such bonds are those issued by any state or its political subdivisions; railroads or other public utilities; manufacturing and industrial corporations; and bonds secured by real estate, except such as are exempt from taxation.

Louisiana required that any person or firm buying or selling real estate and attaching to the deed a map for the purpose of describing the property shall file a copy of such map with the assessor of the parish where the property is located. The parish of Orleans is excepted.

Louisiana provided that industrial plants, engaged exclusively in utilizing certain waste materials for the manufacture of resin, turpentine, pine oils, pitch, and wood pulp and paper, shall be constituted a separate class for purposes of taxation for a period of 10 years from January 1, 1924, to be assessed at 10 per cent of actual value for state purposes, the same valuation to obtain for local purposes.

Mississippi provided that any person who fails to list any taxable personal property shall be liable to a penalty of five per cent of the actual value of the property.

Motor Vehicles

Arkansas, in addition to increasing its tax on gasoline, made a material increase in its registration fees for motor trucks. The rate charged for motor vehicles used for the transportation of freight and property for hire is to be one and one-half the amount charged for trucks. The fee for the registration of motorcycles is increased. Hearses and ambulances have a registration fee of $25 per annum. Dealers pay a registration fee on cars used in demonstrating of $100 per annum. Chauffeurs pay a registration fee of $5 for license to operate a motor vehicle.

The District of Columbia authorized annual registration fees and made provision for the continuation of the personal property tax on motor vehicles.

Kentucky made a material increase in the license fees for trucks and provided that one-half of all moneys raised by this tax should be evenly distributed among the 120 counties of the state.

Mississippi amended the motor vehicle law in respect to fees. Trucks equipped with pneumatic tires are given an advantage over trucks equipped with other tires. Trucks equipped with cushion tires are required to pay less fees than those equipped with solid tires.

New York made a general revision of its motor vehicle law. The new law creates the office of commissioner of motor vehicles who is to perform his duties through a bureau of motor vehicles established in the state tax department. No material change was made in the registration fees.

South Carolina increased materially the annual license fees on motor vehicles. A reduction of 25 per cent in the license fees is allowed on all trucks using pneumatic tires.

Gasoline Tax

Arkansas increased its gasoline tax from three cents to four cents per gallon and added an additional tax on each gallon of motor oil of ten cents. A refund is made to the consumer on all gasoline and motor oil used for agricultural, industrial or domestic purposes. It is further provided that any resident of the state who may purchase gasoline in an adjoining state for use in the state of Arkansas in an automobile or motor vehicle shall pay the four cents a gallon tax to the county treasurer of the county into which he brings the gasoline, whether in a tank of an automobile or motor vehicle or other container. The gasoline and motor oil tax is to be paid into the state highway fund. Formerly the proceeds of this tax were divided between the county highway fund and the state highway fund.

For the District of Columbia, Congress provided for a tax of two cents per gallon on all motor-vehicle fuel sold within the Dis-

trict by an importer, the importer to make a monthly report to the assessor of the District, and to make monthly payment of the tax to the collector of taxes. There is to be a rebate on the amount of the taxes for fuel used in the operation of any stationary gas engine, tractor used for agricultural purposes, motor boat, aeroplane or for cleaning or dyeing or for any purpose other than use in a motor vehicle operated on the public highways.

Kentucky increased the gasoline tax from one cent to three cents a gallon. The former tax was laid on the retailer; the amendment provides that the tax shall be laid on the wholesaler. Formerly reports as to the amount sold and the tax thereon were sent to county clerks; the new law provides that these shall be sent to the state treasurer.

Mississippi made an increase in the rate of tax on gasoline.

Oklahoma increased the excise tax on each gallon of gasoline from the former rate of one cent, to two and one-half cents per gallon. It is provided that 97 per cent of the gallonage reported is to be used as a base in computing the amount of tax due the state. One cent of the tax is to be apportioned quarterly by the state commissioner of highways to each county in the state, in the proportion which the population, valuation and area of each county bears to the population, valuation and area of the entire state. Under the former law the entire proceeds from the tax were paid into the state highway fund and distributed in the proportion that the state highway mileage in the county bore to the state highway mileage in the state. The remaining one and one-half cents is to be deposited in the state depository, to the credit of the state highway construction and maintenance fund.

South Carolina provided that after December 31, 1924, the proceeds of the gasoline tax shall go to the state highway department, for the use of the roads. Formerly this tax of three cents per gallon was distributed, one-third to the state treasurer for the use of the general fund, one-third to the counties, and one-third to the state highway department.

Poll Taxes

Georgia, at its extra session, November, 1923, exempted from the payment of the poll tax the female inhabitants of the state who do not register for voting. Those who have already registered for the purpose of voting may avail themselves of the benefits of this exemption and be relieved of the tax by making application to the tax collector of their county and have their names stricken from the registration books.

Virginia enacted a law to prohibit the issuance of any license, except a marriage license, to any person, unless such person shall file with the proper officer his certificate in writing, setting forth

that the capitation tax assessed or assessable against him for the tax year immediately preceding the last preceding tax year, has been paid.

Miscellaneous

New York in a new law seeks to determine the probable life of a work or object for which a state debt shall be contracted. Buildings are divided into classes A, B and C, lasting from 25 to 50 years. The probable life of roads, streets and highways is fixed at from 7 to 25 years; other improvements, such as elimination of grade crossings and improvements incidental thereto, 50 years; sewers, water, gas or other service connections from the service main in the road, street or highway to the property line, 15 years.

Virginia imposed a state tax of $2 on each marriage license issued, the proceeds of the tax to be applied to the expenses of the state government.

Virginia also imposed on each "emigrant agent" engaged in hiring laborers or soliciting emigrants in the state to be employed beyond the limits of the state, an annual license tax of $5,000.

Chairman Bailey: I want to call your attention to the fact that we have a splendid program tomorrow morning. I have found today that some of our members have a very bad habit of going out and playing golf. I should like to ask you to be present tomorrow.

What is your further pleasure? Mr. Holcomb, have you anything further?

Secretary Holcomb: I think that it would be desirable to reiterate the request for names of members of the resolutions committee. It is about the best time to do it, right now, when we have a little time; otherwise we will be in chaos, trying to find time. If the chairman of the committee is not here, we ought to go out and get him. If you will stay here just a few minutes, then, we will call the roll by states.

Mr. Francis N. Whitney (of New York): Last year we did get into a jamb. As chairman of the credentials committee, we got in a jamb, and I believe I was the goat.

Voice: Goatee!

Mr. Whitney: As Dr. Adams says, I accept the amendment—Goatee! I was the one held up to public scorn, because I demanded the pound of flesh to which Dr. Adams so touchingly referred. Now, I have a request to make. There are delegates here from many of the states, if not all. I believe we have forty states represented, and also the Canadian provinces and the Possessions. I, therefore, would request, as chairman of the credentials committee, that those credentials be left at the registration desk, so that we may have them, and we will have a roll.

Chairman Bailey: What is your further pleasure?

Adjournment

SECOND SESSION

TUESDAY MORNING, SEPTEMBER 16, 1924

CHAIRMAN BAILEY: Our first paper this morning will be "Problems of Tax Administration in Missouri," by Isidor Loeb, Dean of the School of Business and Public Administration, University of Missouri—Dr. Loeb.

PROBLEMS OF TAX ADMINISTRATION IN MISSOURI

ISIDOR LOEB
Dean of the School of Business and Public Administration,
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In an article on recent tax legislation in Missouri [1] presented at the conference on taxation in 1919, it was indicated that in 1917 the most pressing financial problem in this state was that of securing adequate revenues. The general property tax was the chief source of revenue, but constitutional limitations upon the rates and low fractional assessments had made it impossible for this tax to meet the growing needs of the state and the local governments. For more than a decade governors had been compelled to veto or prevent the expenditure of necessary appropriations because of inadequate income. Despite these efforts, howver, it became increasingly difficult to avoid an actual deficit in state revenues. In 1917, Governor Gardner in his inaugural address said, "The first and most important question which confronts us is the problem of raising enough revenue to properly conduct the offices of the state." Under his leadership the enactment of a series of new tax laws was secured and adequate income for the state was thereby made possible.

Governor Gardner realized also the importance of efficient tax administration and in particular was not unmindful of the inequality and injustice that characterized the operation of the general property tax. He secured as part of his program the establishment of a state tax commission, which it was anticipated would be able to introduce greater equality and efficiency in the administration of the general property tax and the new revenue measures enacted at the same time. Constitutional limitations and

[1] *Proceedings of the National Tax Association*, 1919, pp. 68-83.

the necessity of subordinating everything else to the major problem of securing adequate revenues made it impossible, however, to provide for the question of tax administration in a satisfactory manner. It is the purpose of this paper to indicate the most serious defects and difficulties that have arisen with respect to this matter and to suggest some of the remedies that may be adopted.

First, as regards the general property tax, Missouri had the archaic system under which assessments for local and state purposes were made by locally elected county and, in some cases, township assessors, whose figures were subject to change by local boards of equalization consisting of elected officers. The assessments as among the counties were in turn subject to revision by the state board of equalization, consisting of the five principal elected state officers. This board had no power to change the assessments of individuals and no provision was made whereby it could secure expert or adequate information regarding valuations in the different counties. Under these conditions the law requiring all property to be assessed at its "true value" failed of observance practically everywhere and there was gross inequality in assessments within a county and among the several counties of the state.

Unfortunately, the constitution provided for the state board of equalization and the legislature could not restrict its power of equalizing assessments among the counties. The legislature, however, had full power over the procedure of assessment and the law of 1917 gave the state tax commission authority to supervise and correct the acts of local assessing officials and to submit the final assessments of the different counties for adjustment by the state board of equalization. The tax commission met with much success in its efforts to have local officials bring up their assessments to full value and the total assessment for the state in 1918 showed an increase of more than 100% over the figures for 1917.

While it had been anticipated that the action of the state board of equalization would be largely formal in character, three of its five members refused to accept the figures submitted by the tax commission. They stated that so long as intangible and other personal property of enormous value in the City of St. Louis escaped taxation entirely they were unwilling to place larger speculative values on other classes of property in the counties. They also indicated that on account of the financial burdens occasioned by the war they were indisposed to increase state and local taxation. They drew up and adopted their own assessment, which, except for slight changes, due to the normal growth of the state, did not differ materially from that which had been approved in the previous year. This action entailed considerable labor of revision upon local officials and great confusion and dissatisfaction

arose as a result of the conflict between the two state authorities. As this continued in 1919 the whole question was brought before the General Assembly, which met in that year. While the legislature did not change the law requiring assessment at "true value," it evidently was opposed to the policy of the tax commission and a bill was passed repealing the law of 1917 creating that body. The Governor vetoed this measure and a compromise proposed by him was finally adopted. The Governor agreed to appoint new members of the tax commission and the legislature made a greatly reduced appropriation for the expenses of this body.

During the biennial period, 1919-1920, the new members of the tax commission did not attempt to secure full valuation. They were able to work more harmoniously with the majority of the state board of equalization, which approved an increase of about 20% in the total assessment of the state. The appropriation of the tax commission did not enable it to employ field agents and it frankly admitted the existence of great inequalities in the assessment. It recommended the abolition of township assessors and submitted suggestions for making the county assessors more independent of local influences. Recognizing the need of cities and schools for increased revenues, it advocated legislation permitting them to increase their rates or, as an alternative, higher valuations, with authority to the tax commission to make reduction in rates in order to prevent extravagance.

The election of 1920 resulted in a change in the political party in control of the executive and legislative departments of the state. The only member of the former state board of equalization who was reelected was the state auditor who had supported the first tax commission's policy of full valuation. The General Assembly in 1921 made an adequate appropriation for the support of the tax commission and passed laws reducing the tax rate for state purposes more than 50% and prohibiting city and county authorities from levying in any year a rate than would produce more than 10% in excess of that produced by the taxes levied for the previous year. It was provided, however, that with the consent of a majority of the voters, this rate could be increased by any city or county within the limits prescribed by the constitution. No restriction, other than those contained in the constitution, was imposed upon the tax levying power of school authorities. The Governor appointed a new tax commission which has followed much the same plan as that inaugurated by the first tax commission in administering the law regarding assessment at true value. It has been more fortunate, however, in the reception given to its recommendations. These have been substantially approved by the state board of equalization. This resulted in 1921 in a total assessment more than 70% in excess of that for the taxes of 1920. On

account of the financial depression the figures were somewhat reduced in the following years chiefly as regards farm lands and live stock.

Notwithstanding the increased valuation the relatively greater reduction in the state rate made the burden of the tax on property for state revenue purposes actually less than in previous years. Unfortunately, however, some cities and counties did not observe the limitation placed upon their levies by the legislature. Moreover, in many school districts the maximum rates permitted by the constitution continued to be levied, resulting, under the higher valuations, in large increases of taxes. Most taxpayers did not discriminate among the different rates and were concerned only with the total amount of their taxes. The financial depression increased the discontent and led to the general impression that full valuation had resulted in increased taxation of property for state purposes. As a result the tax commission and full valuation were factors in the primaries of this year and may be of influence in the forthcoming election. The difficulties and uncertainties attending the early years of the tax commission materially interfered with the efficient exercise of its functions. Naturally, much remains to be accomplished. It is to be hoped that, whatever may be the outcome of the struggle over full valuation, central supervision of local assessments may be continued, until its essential value is clearly demonstrated.

While the general property tax was the principal source of state revenue before 1917, there were also other taxes from which the state derived considerable income. The most important of these were taxes on dramshop and other business and occupation licenses, inspection of beer and oil, inspection and weighing of grain, incorporation of companies, private railroad cars, gross receipts of express companies and gross premiums of foreign insurance companies. Other taxes were levied for special funds, such as a collateral inheritance tax for the state university, license taxes on hunting and fishing for the game protection fund, and license taxes on motor vehicles, fees for the registration of corporations, and stamp taxes on option sales for road funds. Most of the state departments, boards, commissions, etc. were authorized to charge fees for various services, the proceeds being used to defray their expenses, with transfers from time to time of any surplus to the general revenue fund. The legislation of 1917 added taxes on incomes, corporation franchises, secured debts, wholesale liquor licenses and inspection of soft drinks. It also provided a general inheritance tax for the benefit of the state revenue fund, to take the place of the old collateral inheritance tax. Prohibition eliminated the revenue derived from the manufacture and sale of intoxicating liquors and the secured debts tax and a mortgage recording

tax, enacted in 1919, were held in conflict with the constitutional requirement for the taxation of all property in proportion to its value. Other minor changes have been made by legislation since 1917 but the above substantially indicates the existing sources of state revenue from taxation.

As previously stated, the new taxes of 1917 furnished a solution of the problem of adequate state revenue but there was a failure to deal in a satisfactory manner with the question of tax administration. It is true that the act of 1917 providing for the state tax commission gave it power to investigate and supervise the work of all administrative officers affecting finances and to institute proceedings to enforce penalties against public officers, officers of corporations and individuals who failed to comply with the provisions of any law concerning revenue and taxation. During its early years, however, the tax commission was absorbed with the problem of the general property tax and too much weakened by its contest with the majority of the state board of equalization to undertake supervision over any tax law that was not specifically placed under its administration. In the second and third biennial reports of the tax commission it was recommended that the administration of the income and inheritance taxes be placed in the hands of the tax commission, but the general assembly failed to enact the necessary legislation.

In 1923, however, the Governor became concerned over a probable deficiency in revenue and requested the tax commission to make investigations of the income tax returns submitted to local assessors. In most cases no objection was made by these officials, but in Buchanan County the assessor denied that the tax commission had any supervising control over officials charged with the administration of the income tax and declined to submit the income tax returns in his possession for examination by an agent of the tax commission. The matter coming before the supreme court upon an application for a writ of mandamus, the position of the county assessor was sustained. The court said, "it seems quite clear that the [tax commission] act was drafted with property taxes alone in mind," but held that in any event, as the income tax act was of later date the specific language which it contained would repeal or modify the general provisions of the tax commission act where these were in irreconcilable conflict.[2] This opinion is of significance, not only because it deprives the tax commission of any control over the administration of the income tax, but also for the implication that the tax commission is limited in its powers to the general property tax except where the act confers specific authority to deal with other matters

[2] *State ex rel Monier* v. *Crawford* (1924) 261 S. W. 341.

In only one case has the legislature given the tax commission specific authority over any tax other than the general property tax. The law of 1917 which introduced the corporation franchise tax, placed its administration, so far as relates to assessment, in the hand of the tax commission. While some of the interpretations made by the commission have been subjected to criticism, they have been sustained by the courts and the tax has been administered with efficiency, producing a large revenue with a minimum of expense. In this connection it may be pointed out that while corporations are subject to a number of different kinds of taxes the tax commission has jurisdiction over only two of these, namely, the franchise tax and the general property tax. Express companies which pay a tax on their gross receipts and foreign insurance companies which are taxed upon their gross premiums are not subject to the franchise tax. The special taxes upon these corporations are administered by the state auditor and superintendent of insurance respectively. Companies operating private railroad cars pay their property tax on a mileage basis, the amount being determined by the state board of equalization on the basis of reports made to the state auditor. The tax on the incorporation of companies and the annual corporation registration fee are administered by the secretary of state and the corporation income tax by local assessors and the state auditor. As a result, corporations are subjected to the expense and inconvenience of submitting an unnecessary number of reports to different authorities and the administration of these taxes is less efficient and more expensive than it would be if placed under the jurisdiction of a single body.

The income tax furnishes probably the best example of unsatisfactory results from decentralized administration. As already indicated, this was one of the taxes introduced in 1917 for the primary purpose of securing additional revenue. As regards exemptions, deductions, etc. the act was similar to the general provisions of the then existing federal income tax law and changes in the latter with respect to these features were followed in an act passed by the legislature in 1919. Subsequent modifications of the federal act have not been introduced into the state law, so that today there are material differences in the income tax returns made by the same person to federal and state authorities. This increases the opportunity for evading the state income tax.

The most striking differences, however, between the two income tax laws is to be found in the provisions for administration. For the state income tax each county is an assessment district and the locally elected assessors, collectors, and boards of appeal and equalization administer the tax, subject to the general supervision of the state auditor, who prepares and furnishes the necessary

forms, instructions, etc. If the auditor believes that the income tax assessment of any district has been made erroneously or fraudulently he may, within one year, apply to the circuit judge, who is authorized to appoint a non-resident of the district to reassess the income tax of such district. Penalties to be enforced in court are provided for failure to make or for the submission of false or fraudulent returns. The governor is required to request such information concerning the payment of federal income taxes by citizens of Missouri as the federal authorities may be willing to divulge. All officials are prohibited under penalty from giving out any information regarding income tax returns. It was originally contemplated that the income tax would serve to compensate for the evasion of the personal property tax and a provision was incorporated making it unlawful to use the returns in any manner for the purpose of assessing the tax on property. All income tax returns are to be destroyed within six months after the tax becomes due, provided it has been paid.

It could easily have been foreseen that these provisions would lead to inefficient administration and gradually increasing evasion of the income tax. While the local assessor is usually honest and desirous of enforcing the law, he is naturally subject to the influences affecting any locally elected official. He cannot secure the information and usually does not possess the training requisite for checking up income tax returns, either as regards gross income or deductions claimed. While most assessors have serious doubts regarding many returns, it is not believed that there are many, if any, instances in which a local assessor has refused to make the assessment in accordance with the return submitted by the individual or corporation.

On the other hand, many taxpayers are apprehensive regarding publicity of matters, if included in their income tax returns. While the law provides penalties, it is notorious that such provisions are not taken seriously in many localities and persons naturally tend to omit information which, if public, might prove prejudicial to their interests. The fact that the returns will be destroyed within the year is also an incentive to evasion and this also prevents the auditor from exercising any adequate supervision, even if he was provided with the necessary machinery for making an investigation. As a matter of fact, during the seven years for which income taxes have been assessed, the auditor has not in a single case exercised his power to apply for a reassessment in any county. On only one occasion has the governor exercised the authority conferred upon him with respect to the federal income tax returns of Missouri taxpayers. As the federal law permits state officials to have access only to corporation returns, this would not be of any value in checking up the returns of indi-

viduals. Certain conditions have thus far tended to prevent any widespread evasion of the income tax. The rate is low (1%) and there is no sur-tax on large incomes. Persons who make federal income tax returns do not generally understand the difficulties which prevent the comparison of these with state income returns and tend to make the two agree with each other. There are many cases, however, in which this is not true, and in the absence of effective administration these will tend to constantly increase in number. The last two reports of the tax commission have called attention to this situation and have recommended the placing of the administration of the income tax in the hands of that body. It is imperative that some more efficient state supervision shall be provided in this field.

The administration of the inheritance tax is, in less degree, characterized by similar defects. The county probate court has jurisdiction over the assessment of the tax, including the appointment of appraisers. Central supervision is vested in the state treasurer, and the attorney general and local prosecuting attorneys are also required to look after the interests of the state and to represent it in all proceedings affecting the tax. The fundamental criticisms of this system are division of authority and the fact that the enforcement of the tax is entrusted to officials whose principal functions relate to other matters. Their primary interest is not the efficient administration of the tax and they do not have, nor will they ordinarily acquire that knowledge of technical details necessary to enable them to cope with the skilled representatives of the taxpayers. All are elective officials and many of them are subject to local influences, which consciously or unconsciously may affect their independence of action. The fact that the tax rates are highly progressive, both as regards the degree of relationship and the amount of the inheritance adds to the significance of these defects.

Under the original act none of these officials received any extra compensation, other than necessary expenses for their services in connection with this tax. In 1921 the law was amended so as to give probate judges 2½% of all inheritance taxes. Probate judges, however, are permitted to retain only 10% of their fees after the latter equal the maximum compensation fixed for the office. In all except the smaller counties the ordinary fees of probate judges exceed this maximum, so that the commission paid on inheritance taxes furnish little additional incentive to efficient administration in those counties in which the major part of the inheritance tax accrues. Appropriations are made for the employment of field agents and other expenses incurred by the state treasurer and for special attorney, and other expenses in the office of the attorney general. If jurisdiction over this tax was concentrated in the tax

commission, duplication of field agents could be eliminated, the amount of expenditures reduced and the efficiency of administration promoted.

The taxes on property, licenses, corporations, incomes and inheritances produce about 90% of the total general revenue of the state. Nearly all of the remainder, that is not derived from interest on deposits and excess fees of state officials, comes from various so-called inspection fees. Theoretically these are intended to defray the cost of inspection but the proceeds go into the general revenue, instead of special departmental funds. The fees produce amounts in excess of the appropriations for expenses and in most cases the surplus is quite large. The total proceeds of all inspection fees exceeded one million dollars for the last biennial period. In 1921 Governor Hyde, as part of his administrative consolidation program, secured the passage of a bill providing for a supervisor of public welfare, who was given jurisdiction over all inspection fees, except those relating to grain, which, by another bill, were transferred to a consolidated department of agriculture. These measures, with a number of other bills passed at the same session, encountered severe opposition, were held up by referendum petitions and rejected by the voters at the next general election. Some concentration was secured in 1923, by abolishing the separate offices of beverage inspector and inspector of hotels and transferring their functions to the food and drug commissioner, who had charge of the inspection of dairies, dealers in ice-cream, and eggs and egg products. Petroleum products remain under the supervision of the state inspector of oils, and the state warehouse commissioner administers the law regarding the inspection and weighing of grain. Finally, it may be noted regarding the special funds, that the license taxes on motor vehicles and fees for the registration of corporations, both of which are for the benefit of the road fund, are administered by the secretary of state, while the stamp tax on option sales for the same fund is under the supervision of the state auditor. The license taxes on hunting and fishing for the game protection fund are administered in part by the county clerks and in part by the fish and game commissioner.

While the different state authorities are generally active in enforcing the taxes committed to their jurisdiction, they have in many cases lacked adequate information or power of control over local officials who may have functions regarding these matters. It is apparent that no systematic plan has been followed in providing for tax administration. This has developed in a haphazard manner and naturally there is a lack of harmony and efficiency, while the multiplication of authorities necessarily leads to increased expense of administration. A greater consolidation of these func-

tions and provision for adequate powers of supervision and control over local tax authorities would not only result in increased revenue and reduction of expenses of administration but would make possible a better understanding of the whole problem and lead to a more equitable distribution of the burden of taxation.

CHAIRMAN BAILEY: Ladies and gentlemen, at this time I take great pleasure in introducing to you Mr. Roy H. Monier, chairman of the Tax Commission of Missouri. Mr. Monier has been very active in assisting in arranging this conference, and we shall ask him now to preside.

ROY H. MONIER, presiding.

CHAIRMAN MONIER: Ladies and gentlemen, in behalf of the Missouri Tax Commission we want to assure you that we greet and welcome you to Missouri, and we want to make this meeting pleasant and profitable for you. We not only want to make it socially pleasant for you, but we feel that this is a very important time in Missouri for this conference to meet within our borders.

Listening to the speech of the Governor last night and Dr. Loeb this morning, you are no doubt now aware that much has been attempted in the past few years in Missouri to change our tax laws. We feel that the tax commission here really needs a chauffeur, but if any chauffeur were given an automobile with the machinery in the shape that the tax machinery is in in Missouri, he would strip his gears before he drove the machine a block. We feel that the tax laws of Missouri are out of mesh, and that is why I voice the approval and welcome of the tax commission of Missouri to you at this time, as a help to educate and stimulate the people of Missouri to the needs of improvement in her tax machinery.

The paper just read by Doctor Loeb is highly significant of the condition of affairs in Missouri at this time. It behooves all taxpayers to take an interest. We feel that you people will get a profit from this meeting, but we hope Missouri will get more, and that it will do much towards improving conditions.

I believe the custom is to have a discussion of the papers after they are read; so, after the program is concluded, discussion of the papers will be proper.

The next number on the morning program is a discussion of Kansas Tax Laws and Public Expenditures, by Mr. Noah L. Bowman, member of the Kansas Tax Commission—Mr. Bowman.

MR. NOAH L. BOWMAN (of Kansas):

KANSAS TAX LAWS AND PUBLIC EXPENDITURES

NOAH L. BOWMAN
Member, Kansas Tax Commission

Neither north, south, east nor west, but in the geographical center of the United States is the central state—Kansas. In this favored position its inhabitants, having observed the successes and failures of the surrounding states with their innumerable tax schemes (referred to always as "reforms"), have adopted as the basic principle for taxation "Uniformity and Equality".

We believe that taxes should be levied and collected, using as and for a tax basis the taxpayer's financial worth. Any deviation from this principle is unfair and unjust. The farmer who owns a farm of the value of $3,000, on which is a mortgage of $1,000, has in real estate a financial worth of $2,000. On that he should be taxed and no more. The owner of the $1,000 mortgage has in real estate a financial worth of $1,000 and that should be assessed to him as an interest in real estate, and on that as an interest in real estate he should be required to pay tax. Any other method places an extra or additional burden upon the owners of real estate, to the amount of the mortgage indebtedness.

Within the constitutional limitation, the *power* to determine what objects, rights and privileges shall form the tax basis and the rate or rates of assessment to be applied, is lodged with the legislature or law-making body of each state and the nation. The constitution of the State of Kansas contains the following limitation:

> Sec. 1, Art. 11. "The legislature shall provide for a uniform and equal rate of assessment and taxation."

In the campaign for election of legislators, what rate of assessment and taxation shall be placed on banks and on merchants, on railroads, on farms, etc., does not enter in and obscure all other important matters, nor do the various individuals, companies and corporations besiege the legislature and occupy their time and attention with schedules of rates, each seeking, by fair or foul means, an unfair advantage, as is the case with the national legislature and state legislatures having power to classify property for assessment and taxation.

In the campaign for Congress the candidate must declare himself on the matter of taxation or tariff, and the shrewd politician casts about and, right or wrong, favors the rates that will unfairly favor or protect the industries appearing to be strongest in his district. And while Congress is in session, other needful legislation is laid aside in the struggle for advantage in the unequal rate of assessment or tariff legislation.

The reason for this difference lies in the difference in the constitutional limitations of the state and of the United States.

In the convention that framed the United States constitution on August 25th, 1787, Mr. McHenry and General Pickney submitted the following section:

> "All duties, imposts and excises, prohibitions or restraints laid or made by the legislature of the United States shall be *uniform* and *equal* throughout the United States."

The committee to whom this proposed section was referred made a report August 28th, 1787, striking out of the proposed section the words, "*and equal*". Thus amended, the section was incorporated into the Constitution of the United States, and became, and now is, Section 8, Article 1, and reads as follows:

> "The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States."

In *Knowlton* v. *Moore*, the Supreme Court, in commenting on this matter, said:

> "The sense in which the word '*uniform*' was used is shown by the fact that the committee whilst adopting in a large measure the proposition of Mr. McHenry and General Pickney . . . struck out the words, '*and equal*'. Undoubtedly this was done to prevent the implication that taxes should have an *equal* effect in each state. . . . It becomes plain that the words, '*uniform* throughout the United States,' do not signify an intrinsic but simply a geographical uniformity."

When the United States Constitution was submitted to the states for confirmation, it was opposed in some instances on the ground that it permitted *unequal* assessment and taxation and that "it did not prevent Congress from having it in their power to cause them [taxes] to fall very *unequally* and much *heavier* on some states than on others . . . duties may be laid on articles but little or not at all used in some states and of absolute necessity . . . in others."

The Kansas constitutional provision is a limitation on the power of the law-making body to discriminate between different classes or kinds of property, business or enterprise, assisting and fostering one, at the cost and expense of another. And however burdensome and oppressive the tax may be, if the law of the state is observed, it must be borne equally.

Chief Justice Marshall, in *McCulloch* v. *Maryland*, said: "The power to tax involves the power to destroy." This does not mean

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power to destroy the thing taxed, but power to destroy private ownership in that thing.

How important, then, becomes the constitutional limitation "and equal"—thus requiring the power to destroy private ownership to apply alike to all, and not to fall on and tax away from one unfavored class their title or ownership of their property, leaving the tax burden light on others.

Sections 101 and 102, Chapter 79, Revised Statutes of Kansas 1923, read as follows:

> "That all property in this state, real and personal, not expressly exempt therefrom, shall be subject to taxation in the manner prescribed by this act."
>
> "The term property when used alone in this act shall mean and include every kind of property subject to ownership."

"Equal rate of assessment" [our now constitutional provision] means one standard of value. We have adopted the standard best known to all—its true value in money. "Personal property shall be valued at the usual selling price in money, at the place where the same may be held." "Each parcel of real property shall be valued at its true value in money, the value thereof to be determined by the assessor from actual view and inspection of the property." (Sec. 501, Chapter 79, R. S. 1923.)

Under this standard we assess everything "not expressly exempt" —tangible property, such as land, houses, cattle, tools, machinery, buildings, factories, and also intangible property, such as franchise, good will, etc. A gas plant may have $17,000 worth of pipes, meters, wells, etc., and at the same time have a franchise right, making the plant, with all its right and privileges have a fair market or selling value of $75,000 or $80,000. That is the financial worth of the owners; on that, if legally done, they are now assessed.

The next provision of our constitution is equal rate of taxation. Having found the value of the estate by this equal rate of valuation or assessment, we apply a rate, or multiply the value thus ascertained by a rate or multiplier that will produce a result equal to the amount of money required by:

(1) The school district,
(2) The township or city,
(3) The county,
(4) The state.

Our constitution requires that the rate must be uniform and equal in each taxing district; the school rate equal throughout the school district; the township or city rate equal throughout the township or city; the county rate equal throughout the county; and the state rate equal throughout the state.

The State of Kansas is divided into 105 counties; each county is subdivided into townships and school districts. Each of these divisions and subdivisions, together with each city in the state, is a taxing district. Each property owner in the State of Kansas prepares his own inventory and valuation of all of the taxable personal property he owns and delivers this inventory to the assessing officer of his district, or the assessing officer of that township or city in which it is located or the owner resides, and this inventory is called his return for taxation. It is then the duty of the assessing officer to personally inspect the property, and he may adopt the valuations placed upon the property by the owner or he may, with notice to the owner, either raise or lower the same.

If the personal property is of a character such as telephones, pipe lines or other public utilities, extending beyond the limits of a single township or city, and not beyond the limits of a single county, the return is made to the county assessor and handled by the county assessor in the same manner as the returns made to the city and township assessors. Railroads and public utilities, extending beyond the limits of a single county, make returns direct to the state tax commission. This commission, consisting of three members, treats the returns in the same manner as returns made to township, city and county assessors. After the returns are all made, and the assessments by the assessing officers completed, an equalization board, composed of the three county commissioners in each county, sits at the county seat. The returns in the cities and townships, made to the county assessor, are all delivered to the county clerk and by him presented to this county board of equalization, which board hears all complaints of taxpayers of the several taxing districts of the county and equalizes assessed values as between individuals and townships. These equalized values are then delivered to the state tax commission, and that commission then sits as an equalization board of the state and, after hearing all complaints from individuals, private corporations and business concerns, school districts, cities, townships and counties, makes a statewide equalization of values between individuals, school districts, townships and counties, and also equalizes the values which the state tax commission has placed upon railroads and public utilities extending beyond the limits of a single county.

These values, finally equalized in this manner, form the tax basis of the state, county, township, school district and city. The state tax commission, with this total value as a basis, determines the *rate of taxation* necessary, when applied to the entire value of the state, to produce the revenue required to pay the debts, obligations and running expenses of the state government for the coming year. The three county commissioners in each county use the total equalized value, as determined by the state tax commission of that

county, and adopt a rate of taxation which, when applied to that value, will produce the necessary amount of revenue to pay the salaries of county officers, the running expenses, and the debts and obligations of the *county* falling due in the coming year. In the same manner the officers of each township adopt the necessary rate, the officers of each school district adopt the necessary rate, and the officers of each city adopt the necessary rate of taxation. Thus the rate of assessment is uniform and equal for the entire state and the rate of taxation is uniform and equal for state purposes over the entire state, for township purposes over the entire township, and the same is true in each school district and city.

All taxes, state, county, township, school district and city, except some corporations who pay direct to the state for state purposes only, are paid to the county treasurer and by him distributed to the school district, township, city and state, retaining the county tax subject to the order of the county commissioners.

We claim that this system is theoretically perfect, and all that prevents it from being absolutely and practically so is our inability to legislate good conscience and honesty in and greed out of the officials who administer the same.

By this method of uniform and equal assessment the assessed value of Kansas in 1923 was $3,577,114,130, or practically three and one-half billion dollars. The amount of public money raised from, or collected from, the owners of the three and one-half billion dollars for 1923 was $80,962,306.49. The multiplier, or tax rate (uniform and equal) was easily determined. Let me here suggest that if all "expressly exempt" property and municipal bonds were added, that amount, or the assessed value of the state, would be practically doubled and the tax rate, or multiplier, could be reduced one-half and produce the same revenue. But this three and one-half billion dollars is the financial worth of the citizens of Kansas who have not escaped their share of the burden, through classification and exemptions, and on them falls a double burden.

The protecting benefit derived from the "and equal" clause in the constitution is in a great measure set at naught, when valuable property and rights are not taxed at all. It is estimated and stated by good authority that federal exempt securities, with state tax-free securities, amount to more than four times the total value of all public utilities. This, added to all other "expressly exempt" property, causes an additional and unjust tax burden to be placed on the owners of property not "expressly exempt", more than four times that now borne by all of the public utilities.

As exemptions increase, the tax burden increases on the non-exempt. The final result, in regular course, must be the destruction of private ownership of all non-exempt property.

The remedy is not in the misleading propositions of "tax re-

form", so often inspired by favored interests, seeking to more securely establish their position, but in *reduction* of public expenditures and *abolishing tax exemptions.*

Kansas has the best general tax law of any state in the Union for *fair and equal-handed justice in raising revenue* with which to support the state, county, township, city and school district governments and pay their debts. In the making of those debts, however, we have no general supervising power. Before any public *utility* can create debts, issue bonds, or engage in schemes likely to create obligations to be paid by the public, application must be made to the Utilities Commission and permission obtained. Why not the same in all public obligations and expenditures? A control over expenditures, or at least some veto power over the making of public debts, should be lodged with the Utilities Commission, or with the power whose duty it is to raise revenue with which to pay them. In this respect we take off our hat to Indiana.

We have no state income tax. A state income tax, if adopted in lieu of all other forms of taxation, has much to recommend it. It is on the principle of dividing the rentals with the owner and permitting him to keep his house, or dividing the golden eggs and letting the owner keep the goose, but if adopted in addition to a general property tax, the government can by income taxation take part or all of the eggs, and by general property tax follow up and take part or all of the goose.

This far we have dealt with property wholly within the boundaries of the state. The express company, a non-resident corporation, extends its business activities beyond our state boundaries, and on them an excise tax is levied for state purposes only.

Again, there are over 286 private car companies, who own no railroads in the state, but who own all the pullman cars. The through trains, made up of pullman coaches that pass through from coast to coast, with the exception of the engine and tender, are owned by non-residents and are not returned for taxation by the railroads, and do not pay any part of the school district, township, city or county tax. All of the tank cars are also owned by outsiders and all the refrigerator cars are owned by non-residents. For the use of these cars the railroad companies pay rent of 1½c. to 2c. per mile for the miles the cars travel. When the railroads rent their engines, there will be left for school, city, township and county tax only the rails, cross-ties, ballast and right of way. These cars are taxed by the central taxing power (the tax commission) and pay state tax only, and the methods heretofore adopted of taxing these private cars have been condemned by the federal court, and no substitute has been suggested or provided.

We have an inheritance tax, which is growing to be a revenue-getter, by grabbing into the estates left by decedents. This is also

levied by the central taxing power, and is paid, of course, into the state fund only, no school district, township, city or county getting any direct benefit. Uniformity and equality should be the basic principle of all laws and their administration, and governments, to be lasting, must apply alike to all, not only in form, but in administration, whether it be in preserving peace and good order or levying taxes for revenue.

We have agitators who are industriously condemning our system of uniform and equal taxation. These agitators are generally persons who, by unlawful means, either are, or have been, obtaining unequal and unfair application of assessment, and desire the law so changed that they may do lawfully what they have been doing unlawfully.

Sunday's Kansas City *Star* of January 13th, 1924, had this little paragraph:

> "There are more than a few citizens who, if their own taxes be reduced, do not care whose are not."

A few days ago I listened to an argument in favor of tax amendment authorizing the classification of property for taxation. The gentleman offered as one reason that the old, antiquated notion of uniform and general property tax had been abandoned by every nation of Europe except Holland and Switzerland. I do not know the truth of that statement, but I assume that the gentleman would not state it without investigating and knowing it to be true. But I have only to say that Holland has to fight the ocean 365 days out of every year, having all of its farm land beneath the surface of the water; Switzerland lives on a pile of rocks. With these two handicaps, these are the only countries in Europe that are not now in financial distress.

We have twice in our state defeated a proposition to amend the constitution to provide for the classification of property for taxation, so that rates may be unequal and a few citizens may have their taxes reduced, and we shall be called on in November next to defeat it for a third time. I am sorry, but it is true, that "There are more than a few citizens who, if their own taxes are reduced, do not care whose are not."

Chairman Monier: The next on the morning program is "The Significance of the Growth of Public Expenditures in a Democracy," which will be delivered by Doctor W. F. Gephart, Vice-President of the First National Bank in St. Louis.

Dr. W. F. Gephart (of Missouri): Mr. Chairman, ladies and gentlemen: Sixteen years ago at the Toronto meeting of the International Association, I had the pleasure of presenting a paper under the title of Growth of Public Expenditures. That paper was later published in pamphlet form and circulated, and attracted some

attention from the public press. Those of us who had been following the subject at that time thought we had some cause to sound a note of warning. We felt some fear at the growth of public expenditures, but looking back now through that period of sixteen years, if we felt fear at that time, we ought to be paralyzed today. So this morning I want to discuss with you briefly, not so much the facts of the growth of public expenditures—Mr. Gottlieb is to do that this afternoon — but to point out what in my opinion are some of the significant elements in the growth of public expenditures under a form of government such as ours.

THE SIGNIFICANCE OF THE GROWTH OF PUBLIC EXPENDITURES IN A DEMOCRACY

DR. W. F. GEPHART
Vice-President, First National Bank in St. Louis

Political society has been characterized, during the past several centuries, by an almost continuous extension of the suffrage, and, therefore, an increasing control of governmental activities by the masses. The people not only select their law-makers, their administrators, and judges, but they also determine the policies of their government, either through such direct methods as the initiative and referendum, or by that indirect pressure of political control felt by those seeking office or by those holding it and hoping to retain it.

Political authority has come to mean the control of the economic and social activities of society. Government has reached the point where it is all-embracing and inclusive. The state has become dominant in human society. It overreaches all man's major activities; it educates our children; it provides and regulates our amusements; it lays down the rules for the organization and conduct of industry and watches its citizens in almost every act of their waking hours. This is quite in contrast with the earlier period, when the state concerned itself chiefly with such matters as preserving order and collecting taxes. It left to the citizen in a large way the control of his private and business life and most of his social activities. It is even in contrast with the earlier days of democratic government, when it was a common belief that that government was best which governed least. In relation to the subject of taxation and public expenditures this all-embracing political control of human contact expresses itself most directly in its power to levy upon the wealth of the citizens to provide funds to conduct these manifold activities of the present day governments. Sovereignty in no other particular is today exercised over the people in a more direct and inclusive manner than in levying taxes and supervising the business conduct of its people.

This increased control of society by the masses has been accomplished through the extension of the right of suffrage, so that now the power of the ballot controls political action and this in turn determines in a large way economic and social conduct. This has become increasingly true in all nations, whether they are under a republican or monarchical form of government. The public purse is controlled by the mass of voters and not by those who own the wealth. The extent and kind of public expenditures is decided by the electorate and not by those who contribute directly a large proportion of the funds to meet such expenditures.

Notwithstanding the assertion of radical social reformers, there has been, during the past century, an increase in the diffusion of wealth and a higher standard of living and well-being is enjoyed by an increasing number of people. The wonderful technological progress made during the past century has not been monopolized by a small minority of society, but its benefits have permeated to the masses. The significant fact in this increased diffusion of wealth, in so far as it affects the growth of public expenditures, is not always apparent. As the standard of living has increased, demands for governmental services have likewise expanded, and because of the political power of the masses, such demands have not alwyas been subjected to careful control regarding their reasonableness.

The world has for many years been passing through a period of rapid change. The industrial revolution, bringing in its wake the factory system and the modern industrial city, has thrown upon national, state, and city government increased activities. The mere gathering of large populations in limited areas brings problems and activities to the government, varying all the way from sprinkling the streets to factory inspection, municipal nurses, and city hospitals. The growth of humanitarian ideas in industrial and social life brings to government increased responsibilities and expenditures. The development of the idea of representative and democratic government has meant both a confidence in the power of the government, as an agency for promoting human welfare, and, at the same time, a self-assurance on the part of the average citizen that he has the ability to fill successfully public office. It would thus seem that we have, in a kind of blind confidence, been transferring to our governments increased duties and responsibilities, without at the same time either improving proportionately the organization and machinery of government or entrusting its operation to more able and skillful operators.

The foundations for our present tax system were laid in the early days of this Republic when economic and social conditions were very different from what they are today. At the close of the eighteenth century, wealth consisted primarily of tangible property,

such as land, buildings, live stock, plant, and equipment, and such other forms as could not easily be concealed. It was under economic conditions such as these that we laid the basis of our taxation system, especially that of the state and municipalities. The old general property tax has been, and still is, the foundation-stone of the tax system in most of our states. Industrial development in the nineteenth century was very rapid and many new intangible forms of wealth came into being, which produced many inconsistencies and inequalities in our system of taxation. The results of these changes have been far-reaching. It has enabled many forms of wealth to escape taxation and has freed large groups of the population from any form of direct taxation. This does not mean that the masses completely escape a share of the tax burden, but rather that they do not pay it directly, and, consequently, take but little interest in the tax rate levied upon forms of wealth which they do not possess. The result has been that their demands have not been tempered, as they might otherwise have been, had increases in taxation, resulting from enlarged public expenditures, been directly and equitably chargeable to them.

The growth of the modern industrial city, with the failure to devise proper systems of taxation and the lack of control over public expenditures has been responsible for the situation today, where those who can determine not only the character, kind, and amount of public expenditures, can also largely avoid bearing directly a just proportion of the cost. The growth of the modern city has been rapid and the conditions governing urban life, industrially and socially, has created a large number of non-property-holding voters. This large propertyless class is the possessor of political control, and yet, because of conditions already described, largely escapes the responsibility which should accompany the power which they can and do exercise. Although no reliable statistics are available, it is very probable that the proportion of the population who receives benefits from these large public expenditures, without bearing a direct commensurate burden of cost, is greater than ever before. In the democratization of society the increased diffusion of wealth and general well-being is a very desirable end to be achieved, but at the same time a just share of the burden of providing the public benefits should be borne by the mass of voters. The propertyless class or the tax-free element in every large city population in this country is so great that bond issues or provisions for public expenditures of almost any character and amount can be carried or enforced without much reference to the merits of the proposal or with little regard to the justness of the distribution of the cost. The average voter, who is almost always ready to favor such expenditures by the city, state, or nation, whether it is providing public parks, playgrounds,

streets or roads, feels that under the prevailing system of taxation and his propertyless character, or non-taxable holdings, he will pay little or none of the cost of such public expenditures. He entirely overlooks the indirect effects of such expenditures or the real burden he is placing upon himself and the whole community. A city can carry a 75-million-dollar bond issue, providing for a dozen different projects, or a state can vote a 100-million-dollar bond issue for a system of good roads, without ever taxing the intelligence of the average voter, and any one who does raise his voice in protest is immediately labeled as lacking in civic virtue and pride, if not something worse.

In substance, those who have had most authority in matters of public expenditures have felt their responsibility least. That portion of the population owning those tangible forms of wealth, which have been most heavily taxed, have been in the minority and have been able to assert but little influence on questions of public expenditure. This group, in order to protect itself, has sought to shift a portion of the direct tax to others in the form of higher prices, increased rents, concealment, and in other ways. While this method has succeeded in diffusing the burden somewhat, it has failed entirely to produce a demand for the proper and careful administration of public expenditures that the same burden would probably have produced, had it been levied directly as a tax instead of indirectly in a manner not always realized by those making the payment.

Man has been more successful in creating and operating his religious, educational, and industrial systems than he has in devising political systems and institutions to govern himself. Religions have endured throughout centuries, and likewise educational systems, with their modifications, differ in essentials little from century to century. Private property and free contract have been the characteristics of our industrial system, with only isolated and occasional exceptions, almost from the time since property and capital existed. But governments have throughout the ages run the scale from absolutism to anarchy. It seems that man alternates between an unbounded confidence in his knowledge and ability to govern himself and his utter indifference, discouragement, and willingness to be ruled by others.

It is held by some students of political society that the periods of reaction to the more simple autocratic forms of government occur when the social group has transferred to their governments too many regulations of human conduct; when the multiplicity of laws, administrative rulings, and public servants are so numerous and when so much of the social income becomes expended through the instrumentality of the state. All this, it is argued, produces a cumbersome and inefficient political organization, which in time

breaks down. In short, this result, it is said, is brought about when the political citizen entrusts to the state many duties and obligations which he, either as an individual or in voluntary association with his fellows, ought to perform without the intervention of that assumed magical power—the government.

The whole matter of taxation is a much more important question in a democracy than many appreciate. The demagogic politician can always secure a popular response by advocating higher taxes for the wealthy and lower taxes for the masses. To the unthinking this is always attractive, because they fail to realize that in the last analysis society is a unit and that there are limits beyond which the tax burden can be shifted from one class to the benefit of the other. While one group can be made to make the actual payment, the real burden itself does not always remain where it is placed and it not infrequently happens that where the tax can be shifted, not only the tax but something in addition is added, and in this way ultimately injures those whom the law seeks to benefit. The enormous growth of both local and national expenditures in recent years can, to a large measure, be traced to this feeling on the part of the populace that many desirable large public expenditures constitute no direct increase in the burden upon them. This is a matter of extreme importance to a government such as ours, where the only check upon public demands is the judgment of the electorate. In a monarchical form of government a benevolent despot may father the interest of the masses in such a way as to give them a good government at a reasonable cost. In a democracy they must look after their own interests, and unless they thoroughly appreciate their own responsibility in this respect, they cannot easily protect them.

The governing class in a representative government is not always made up of the best citizens. However numerous may be the officials who are influenced by the altruistic ideas of patriotism and public service, the fact remains that public officials, by and large, are not influenced by the powerful motive of self-interest, as is the case in private enterprise.

It does not follow from the foregoing that the development of a democratic or representative government is to be deplored, or that the earlier forms of monarchical, oligarchical, and despotic forms of government, with all their degradation of the common man is to be preferred. As society becomes more complex and highly developed it is inevitable that government shall play an increasing role in human affairs. An increasing proportion of society's income comes to be expended through the instrumentality of the state. Governments alone can do many things for their citizens which they cannot do as individuals for themselves, and for equally good reasons the people will use their governments to do

many things which were not formerly done. Public sanitation and health, for example, becomes in our modern cities a matter of great public concern, and the ends to be achieved can only be secured through the instrumentality of government. But all these activities of our present democratic governments entail enormous expenses and it is the duty of the citizens to realize the importance of equitably distributing the cost as well as securing a proper and just return for the expenditure. The sound judgment of the people can never be exercised on such matters, unless a just and equitable system of taxation exists, which enables everyone to make a real appraisal of proposals for public expenditures, in the light not only of the benefits to be incurred, but of their costs as well. We all have desires far beyond our means, and we all know that the satisfaction of our desires must be tempered by our ability to bear the cost. If we ignore this in our private affairs, disaster is inevitable. The state as well as the individual must live within its income. No private business could be run if the spending authority were divorced from and ignored the paying authority. Yet this is just the state of affairs we have gotten into with respect to many public affairs. We fought against taxation without representation; now we have the representation but our tax system is still inequitable, because the spending authority is not directly responsible for paying the bills. It is human to seek to avoid responsibility, but this is a duty that the people in a democracy must assume or suffer dire consequences. There is no one thing which is doing more to cause people to lose faith in their representative and democratic forms of government than the disposition to enact laws and create boards and governmental agencies which are expected to accomplish reforms and do things enmass which can only be done by the individual himself.

The late World War had a marked effect on our government expenditures, national and local. It accustomed us to enormous appropriations and expenditures. It set a new standard. Nations were surprised that such enormous funds to prosecute the war could be supplied by their citizens. There seemed to be an inexhaustible supply of wealth in the possession of the people. All this experience has influenced post-war government expenditures. Consciously or unconsciously the legislator and the private citizen, when appropriation bills or bond issues are being considered, have been influenced by this assumed war measure of the country's wealth and have, therefore, proceeded to make expenditures with a prodigality never before practiced. Then too, modern business sales methods have had their influence. With the development of the time payment sales method, debt creation and credit expansion has been greatly stimulated. Advertising campaigns deluge the people with the idea, "pay while you enjoy," and consequently

appeals for public improvements calling for bonded debt are more easily carried. This idea was given greater force in national, state, and city governments, where many normal peace-time expenditures were postponed in favor of the pressing war needs. When peace came they proceeded to satisfy these normal demands, forgetting that the cost of the war had been paid only in part and relying wholly on this war-time evidence of wealth to justify these enormous expenditures. The result is that the citizens not only will be for many years paying in the form of taxes these war expenditures but that there has been added to it the large expenditures of the post-war period.

If such appears to be the situation are there any means or remedies to correct it? In the first place much can be done in educating the mass of voters to a more proper sense of the responsibility which this enormous political power and control that they hold over the social and economic activities entail. Mass political control is a fearful power, which may destroy itself through the increased and unwise exercise of it. It is obvious that any such remedy for the present situation in regard to public expenditures in a democracy will only slowly produce results. Social progress of any kind is painfully slow and instead of being continuous, as is usually assumed, has been now backward and now forward, but in the opinion of the optimistic, continuous over long periods of time. The voter cannot expect to find an unlimited fund of wealth upon which he can levy to provide for governmental expenditures of all kinds and descriptions, if the present system of private property and free contract is to be continued. Reasonable consideration must be given to the owners of private property and encouragement given, not only to create new wealth continuously, but also to enable the possessors to determine the way in which a reasonable part of the income from this wealth shall be expended. The voter must be discriminative, not only in what public expenditures to make, but also in selecting his representatives and public officers to make and supervise the expenditure.

Adam Smith long ago laid down the principle that taxation should not be so heavy as to either impair the patrimony of the state or be repressive to industry. We have doubtless not yet reached either point in this country, because of our enormous and rapidly increasing wealth, except perhaps in some cases of our local governments, whose debts and public expenditures have increased faster than the taxable value of their property, or, at least, more rapidly than the revenues they are able to raise under the prevailing system of taxation. But public obligations have in a sufficient number of cases been so carelessly assumed and expenditures made on such a wasteful and inefficient basis that we have reached the point which calls for greater attention on the part of the voter.

But there are other more practical methods of controlling this tendency which can produce quicker results. In the first place, the restrictions on the debt limit by the legislatures can be made more rigid. In the second place, there can be devised greater control and restrictions on the voting of bond issues. In the third place, and probably most important, improvements can be made in our state and local tax systems. The National Tax Association has devoted years of constructive work to this subject and has to its credit many outstanding accomplishments. It has been the greatest force for improvement in the United States for many years. But progress in matters of tax reform is always slow.

There is no other topic of public and business import about which there is so much prejudice and misunderstanding as that of taxation. The voter is slow to approve any change in the tax laws "lest he flee from evils to which he has become accustomed and fly to those about which he does not know." The basic foundation from which arise most of the taxation evils in Missouri results from a continuation of the old general property tax. This was a system of taxation devised to tax tangible, material, real property. When, in the earlier days, most all property was of a kind that could be seen and valued, when the wealth of the country was almost wholly land, buildings, animals, tools and other material things, then the general property tax was a reasonable, fair, and equitable tax. There were very few intangible things, such as stocks, bonds, notes, mortgages, money in banks and other intangible personal property, which could easily be concealed from the assessor and other taxation officials.

But the development of modern industrial society, with the corporate form of business organization, has meant an enormous increase of intangible property which eludes the taxation official operating under the old general property tax laws. What was once an easily administered and fair system of taxation has completely broken down into a system of taxation replete with injustices and inequalities, both with respect to the individual taxpayer and the different civil subdivisions of the state, such as the county and cities.

Chairman Monier: This closes the regular program of the morning session, but according to your rules, adopted at the evening session yesterday, in general discussion, each speaker shall be limited to seven minutes, and such time shall not be extended, and no person shall speak more than once during the same period of discussion until others desiring to speak have been given opportunity to do so. At this time, then, you are permitted to discuss the papers that have been delivered this morning, subject to the rules that you have just heard. If you care to discuss these, when you arise, please give your name and state where you are from, so the secretary may have the same for the minutes.

MR. DOUGLAS SUTHERLAND (of Illinois): Mr. Chairman, I merely want to ask a question. I should like to ask Judge Bowman of the Kansas Tax Commission the amount of assessed value that they have on their books from savings accounts, commercial accounts and general credits in Kansas.

MR. BOWMAN: We have on the tax roll in the State of Kansas just as many dollars as there are dollars in Kansas. Some escape with their dollars, but others that have credit deposits instead of money deposits are on the tax roll, and we have gone over it until we are perfectly satisfied that there isn't any more money in Kansas than there is on the tax roll, in total. I have been over this on both sides, in and out; I have been interested in banks that succeeded and in two banks that failed; I am very well acquainted with the situation, and there is a lot of credit money reported as bursting the vaults of the banks in our state that is not money at all. John Jones comes in and gives his note, and it is put on the books as so much deposit. We have all of the money that is on deposit in these savings accounts, on the tax roll—not all of the money, but we have an amount equal to all of it.

MR. SETH COLE (of New York): I should like to ask Mr. Bowman if he will be kind enough to elaborate a bit and tell us how the Kansas plan of having the State Tax Commission equalize individual assessments works out.

CHAIRMAN MONIER: I believe the rules provide that the question be propounded by the Chair. Mr. Cole of New York desires to know how the equalization of personal property by the tax commission works out.

MR. COLE: Not personal property; the equalization of individual assessment of real or personal property.

MR. BOWMAN: On the tax commission's side of the table, it works out very satisfactory; on the taxpayer's side of the table, as a brother over here, whose head is as white as mine, will testify, I hear it does not always work out satisfactorily. We equalize these assessments, whether they come in and complain or whether we have to bring them and have them complain, but we go over it until we feel satisfied with the job. It works out, first, through the local board in each county; appeals may be taken from that board, in aggravated cases, to the state board, but the state board is not limited to such appeals. It is the duty of the state board to go into the entire state valuation. We have all the personal property, and we have the values of the different classes before us, and the land values. The land in our state is assessed once in four years, and once in two years if the local county commissioners by resolution order it done. It works out to our satisfaction on the tax commission's side of the table.

MR. FORNEY (of Ohio): I should like to ask Mr. Bowman a question: If I understood him correctly, the tax in Kansas is determined on the basis of net worth, net wealth. If that is the case, doesn't much real estate escape from taxation entirely? For example, if a resident of Missouri holds a mortgage on a Kansas farm, how is that equity in the farm taxed in Kansas? Doesn't it afford an opportunity for much evasion of the payment of taxes on real estate? Another example: If a foreign corporation owns real estate in Kansas, all of which is covered by bonds held outside of the State of Kansas, how do you reach the tax on that real estate in the state?

Another question in connection with it: Isn't that scheme of taxation of real estate contrary to the provision of the model system that provides that all real property should be assessed in the local taxing district where it is located, without regard to ownership?

MR. BOWMAN: My good brother mistook, I fear, what I said in regard to the ownership of two thousand dollars in farm equity and the ownership of one thousand dollars in a farm, that they ought to be assessed to these two owners. Understand me, they do not do that in Kansas. I tried to get them to do it in the legislature, and they said no; they don't do it that way. As a matter of fact, we assess all personal property to the owner. We assess all real estate, without any regard to ownership at all.

Does that answer the question?

MR. FORNEY: Yes, sir.

MR. ZANGERLE (of Ohio): As Judge Bowman states, they have adopted what he regards as a perfect personal property scheme, and as the wording of the constitution seems to have been, so far as I have been able to observe, a reaffirmation of the Ohio constitution, I think I am justified in assuming that their laws are somewhat similar to the Ohio laws. Under the circumstances, I am anxious to know how in Kansas the corporate excess is secured. In the State of Ohio we are not able to get it. Take, for instance, the Standard Oil Company; it hasn't very much property, relatively speaking, but it has a very large income. I am wondering, after taxing the small amount of property they have, how Kansas secures the balance of the financial worth of the Standard Oil Company. That is one question.

A second question: I do not suppose farm property is leased to the extent that industrial and retail property is in our larger cities, but assuming they have the leasehold system in vogue, and assuming a hypothetical case; that a piece of property is leased for ninety-nine years, with a right of renewal for another period, and that that lessee then re-rents, as has been done in my city of Cleve-

land, to a subsequent lessee, involving, say, an increase of forty thousand dollars a year, amounting therefore to a million dollars as to one particular site I have in mind, in my own city; I am wondering how that forty thousand dollars a year income, arising from that second lease, is possible of taxation in Kansas.

Another question: If you tax money as money, where many owners of that deposit have to pay their debts with it eventually, I am wondering how in Kansas you can get at the financial worth by taxing the money.

And another question: If you tax the inventories according to their averages, do you tax the inventories on the knowledge that the assessor has of the value of the properties, or do you tax the property according to the book value, as represented, for instance, by a large department store, having two or three millions of dollars of property? I understood that Judge Bowman said that the assessor is supposed to inspect the property and give a value thereon.

Another question: I should like to know what Kansas does in a case like the case of the Standard Oil Company; perhaps a month before the tax-assessing day comes along they have five or ten million dollars of credits that become liquid assets — money — before the tax-assessing day, and that is invested in tax-exempt United States bonds.

We have in Ohio a law which provides that the assessor, which happens to be myself in my county, must discover how long the taxable property was held, for what average length of time, and of course the corporation comes back and says, "Why, that was not held at all; we did not have money, but as money was realized we put it in the tax-exempts."

Now, as a matter of fact, one of the reasons for the downfall of the general property tax is the very fact that this taxable property is put into non-taxables about tax-listing time, and that the assessor is practically unable to administer this other provision providing for the discovery of the average length of time that our best corporations—not the poorest, because the poorest haven't any—the length of time that our best corporations held this taxable property which they have now turned into non-taxables, for the purpose of tax-listing day, and which a few days afterwards is perhaps reconverted into taxable property.

I have some more questions, but I think that will do.

CHAIRMAN MONIER: Judge Bowman, it looks as if you are going to be penalized now for having such a wonderfully administered law. There are five questions.

MR. BOWMAN: I solemnly declare that the gentleman and I have entered into no secret agreement to monopolize this meeting, but if I should answer all of that, I fear no one else would have a

chance to talk whatever. Those are definite questions, but there is too much to them, and I will answer one of them.

MR. ZANGERLE (of Ohio): What do you do towards the inventories of corporations? We go back and get the books and pull them in, the same as Uncle Sam does. I wonder if you do that.

CHAIRMAN MONIER: How do you discover and determine the inventory of corporations?

MR. ZANGERLE: The inventory values?

MR. BOWMAN: We have always been permitted to examine the books of corporations. Right now I have one in mind which denied the local assessor the right to examine its books, and then told the local assessor that the books were not there. The way we then persuaded those people to let us see the books was to assess them at about three times what we were sure they were worth. They came with the books.

CHAIRMAN MONIER: Any other questions or discussion?

MR. JOHN T. SIMMS (of West Virginia): Mr. Chairman, I should like to inquire of Mr. Bowman, where the taxpayer makes return of moneys and credits and investments, whether he is permitted to deduct debts owed by him to others. I understand the answer is in the affirmative.

I should like to ask further how the State Tax Commission, as a reviewing body, ascertains values in the state; in other words, as commissioner of your state, how do you know values in the extreme parts of the state, where you are not personally acquainted? Do you rely upon agents, deputies, or expert information, and how many of those do you have, and what do they cost?

CHAIRMAN MONIER: The question has been asked how the tax commission determines the value of remote property, in remote sections of the state, whether by this or by what method, and if so, what does it cost.

MR. BOWMAN: Mr. Chairman, in June we prepare a calendar. On a certain day we will hear Allen county or Anderson county, commencing alphabetically. We send a notice to the county clerk that on that day—and we list a number of counties on the same day—we expect that county clerk to appear before us, and on that day we have, not experts that we send out, but men who are experts in that locality, by reason of being thoroughly acquainted with the problem and the location, and it costs us nothing. We talk with those gentlemen, and put them under oath if necessary; and if we are in doubt about it afterward, the legislature makes a special appropriation for traveling expenses for us to go personally to investigate that county.

MR. SIMMS: I have another question. Does your answer just made refer to property owners who have complaints, after notice is published, or are you referring to persons who are merely interested in a community who voluntarily appear before your board?

CHAIRMAN MONIER: Do you understand the question? Mr. Simms asks the question if this investigation is predicated upon complaints or upon people directly interested?

MR. BOWMAN: Sometimes complaints come in directed to us. We call it tax grievance petition, sometimes the question arises by way of appeal from the action of a local taxing officer. Those complaints are set down separately and are treated independently and just as a small country justice of the peace would do with a lawsuit, we sit down and hear it. But what I am talking about generally is that notice is given out, and people voluntarily can come before us on these days. Any citizen of Allen county, for instance, may come in and state that tax affairs are not conducted properly in his county; may appear before us on the day Allen county is to be heard.

MR. SIMMS: Do I understand that the board sits in that county, or does the county come to the board?

MR. BOWMAN: They come to the capitol, and we have stenographers take down what is said, and we get all the information we can. For example, in the western and middle parts of our state we have one kind of cattle; down in the southern part we have little old Indian cows, and a two-year-old steer located in the middle part of the state would not match with a two-year-old steer down in Cherokee county. We inquire and find out what they cost and sell for on the market and see what the average value of cattle over the state is; we do the same with horses and the same with land.

MR. SIMMS: I don't want to burden you, but if I may, I should like to ask one more question. I am very much interested in this. We are taking it up in our state. I should like to ask if your state board undertakes, on its own motion, to review the values of all property in the state? If it does, how much time goes to that?

CHAIRMAN MONIER: The question is asked if the board takes up the review of all property in the state, and if so, how much time it requires.

MR. BOWMAN: The statute fixes the time when that shall commence, but does not fix a time when it shall close. The only limit is that on the first day of August of the year following the year that the assessment is made, all inquiries on that assessment, or corrections, shall cease.

MR. SIMMS: As to each particular assessment?

MR. BOWMAN: Each particular assessment. The assessment is as of March 1st. The assessment of March 1st, 1923, was closed, as far as investigation on the part of the tax commission is concerned, August 1st of this year. It is true that after the taxing scheme has closed and the scheme of collection has commenced, we do not change the values or order them changed, in general, or disturb them on the books. We correct individual errors and grievances, by rebate and cancellation until the first day of August of the following year.

MR. SIMMS: Is there any appeal from the board's decision to the courts of the state?

MR. BOWMAN: If you will read the act creating the tax commission of the State of Kansas you will find there is. Then I have to tell you that the court has said that the tax commission is not a judicial body, and an appeal cannot lie to any court from the tax commission, so there is no appeal, notwithstanding there is one provided.

MR. ZANGERLE (of Ohio): In 1917 the City of Cincinnati reappraised, and there were, I think, ten thousand complaints filed. If that same ratio had obtained throughout, it is unnecessary to tell you there would have been possibly one hundred thousand filed throughout the state. I am wondering how the tax commission of Kansas would be able to take care of those individual complaints.

MR. BOWMAN: Brother, I have some good relatives in Ohio. I didn't know they were so troublesome. We never anticipate such an outbreak. True, we have them, but they are smaller. The complaints down in Bourbon county are about the same as they are in Brown county, and we divide up the work somewhat, and the help, which is not changed as fast as the political face of the state changes, becomes expert, and they do a whole lot of this work. Then we say that is our judgment.

MR. PHILIP ZOERCHER (of Indiana): We have in our state, according to the constitution, a general property tax. Our experience has been that the State Board of Tax Commissioners might adopt orders of equalization until doomsday, but unless it has authority, on its own initiative, to certify for review and reassessment any individual assessment, you will never have equalization of valuation in a state. The law of 1919 conferred that power upon the state board in our state. It was first suggested by Timothy E. Howard, one of the old judicial minds of the State of Indiana, and the man who really was the author of the law of 1891. He said that unless the state board, or county board of review, had the authority on their own initiative to call before them any individual

in the county, there would never be equalization of value in a county or in a state.

Last year we certified for review and reassessment a great list of merchants in the State of Indiana; we have five field men, who are paid $2,800 a year and expenses, in addition to the three commissioners; and they go out from county to county to look over the returns made, and under our law we require that the balance sheet be filed on a supplementary blank which is considered confidential. The taxing officers check these things over; we are generally able to tell whether a balance sheet is a correct one or not, but if we think it is not correct, we go to the office and ask them to let us see the books, and if they do not let us see the books, we do like the gentleman over here; we guess pretty high and triple it, and then they will show us the books.

On the amount that we certified for review and reassessment last year we increased the total valuation over fifteen millions of dollars. That, with the average tax rate in the state, almost paid the entire expense of the commission and all its functions for the one year. That is our experience in the State of Indiana, but it cannot be accomplished unless the state board is given authority.

That will answer the question of the gentleman from New York. You can equalize that way, by certifying and correcting the assessments of individuals either up or down. If they are not too high, they will not come and complain, but if they are too high, they will complain. The problem is to find out those that are escaping and not giving their property in. Those are the ones you want to certify and see that they are placed on the basis with the rest of them.

Mr. W. W. True (of the District of Columbia): I should like to ask Mr. Bowman, in connection with the administrative provision for determining the net worth, how is it applied in the case of a natural resource, involving the severance of a commodity from nature, such as oil, whether an allowance is made, sufficient to compensate for the bare cost of development, or whether the allowance is such as will provide for the believed value of the resource as it exists in nature?

Mr. Bowman: We have coal, we have zinc, we have oil, we have gas. If one man owns the surface and another man owns the mineral deposits, they are assessed separately, and they are assessed according to their value in money, that is, what a purchaser would pay and what an owner who was willing to sell would take for the mineral deposit — leases, we call them, but they are interpreted, some of them, as a mere license to go on and take the property. When there is no actual transfer of the mineral, then it is determined by what a man of good judgment would be willing to pay for it at that place and at that time, and it is assessed at that value.

We have oil. Our people know pretty well, for instance, what the Standard Oil or Prairie Pipe Line Company in our state is willing to pay for wells. They buy them by the barrel; that is, they test a well for thirty days, and the total number of barrels produced is divided by thirty, and that is the average amount of oil produced, and they buy it by the barrel.

This last year it was determined among oil men and the tax commission — and everybody generally was satisfied — that oil in our state, or a well in our state, should be taxed at a rate of six hundred dollars for every barrel of oil it produced in a day. A well that produces ten barrels a day on an average, would be worth ten times six hundred dollars, or six thousand dollars. That is what men would pay for that well, and that is what a man, if he wanted to sell, would take for it, and that is the basis of assessed value, and it is assessed in our state at that value this year.

Mr. Leland (of Kentucky): Since all of the property of Kansas has been assessed at one hundred per cent, or at its true value in money, I should like to know why in Kansas they tolerate equalization, or just what you mean by equalization; and then, if I may ask another question, I should like to know just how they find out the true value in money of all property in Kansas.

Mr. Bowman: The true value of any property in money is what a man wishing to buy will give and what a man wishing to sell will take. We find that out and call it its true value in money.

Mr. Leland: I should like to know just how you find that out. I understand that it is the true value and the full worth of the property, but how do you know what the buyer will give and what the seller will take?

Mr. Bowman: It would take too long to go over the whole list. We raise the best wheat in the world, and a lot of it. We ascertain the price of wheat on the first day of March—that is the day we assess everything—at the market. We then ascertain what it costs to bring it from this or that place. They do it in the county, and the county commissioners first take off from the price at the market on the first of March enough to take it to market, and that is pretty well established in our state.

You understand, that out there they start a mowing-machine, and before they get through with it there is a threshing-machine on the same wheat, and then a truck ready to catch it as soon as they get a hopper full, and then it is taken to market, and they pay a certain amount per mile for delivering that wheat. They know what they get for it at the market. They take out the cost of transportation, and that is the value to that man; that is his financial worth in that wheat—what he gets, less the cost.

CHAIRMAN MONIER: It is getting late, and we are going to have to close this session. There are some announcements to be made. I will recognize these two men, and then we are going to close this session.

MR. HUNTER: I should like to ask the gentleman from Kansas a question. I can readily understand how you determine the true value with the rule you apply for wheat or corn or anything that has a market or is marketable, but I should like to know how you are going to reach real estate, when, as it is now in many places, you can offer your real estate at half what it is assessed at, and there will be nobody to buy it. How do you determine value of real estate offered at less than what it is assessed at?

MR. BOWMAN: The courts have generally said that a farmer is an expert in the line of valuing real estate. In condemning land, whether there is any selling price or not, experts are brought to testify as to the value of the land. It may not be selling and have no market, and the framers of our statute thought of that thing. You will notice—perhaps I read it too fast or not plain enough—it makes this distinction; that real estate shall be assessed at its true value in money, and personal property shall be assessed at what it will sell for at the place where owned.

There is a market for personal property. It is movable. There is some place here or there where you can sell it; then take from that selling price the cost of transportation, and you have the value of the personal property.

But real estate has often a different kind of value, in the minds of people, but our statute says its true value in money, and not its selling price. It does not say selling price. It leaves that out. It says it shall be assessed at its true value in money.

If I have three thousand dollars and a man has a farm over here, and he would rather have money than land, and I would rather have land than money, it is a cold proposition, and I decide whether that land is worth my three thousand dollars to own it. If it is, that is its value in money, and that is the test—what a man without any sentiment attached to it would give, is the actual value in dollars, whether it sells or does not sell, and that is determined by men who are acquainted with the country, with the land, and who are themselves experts. We claim that we fellows on the tax commission are experts.

MR. SUTHERLAND (of Illinois): I was disappointed, though not entirely surprised, that we were not able to get an approximation of the total amount of assessed value of bank deposits, but I think all of us in general property tax states would be interested if Judge Bowman would tell us just how they determine the owners of savings accounts in Kansas and the amount of each holding.

CHAIRMAN MONIER: How do the taxing authorities of Kansas determine the owner of a savings account and the amount of his account?

MR. BOWMAN: Every citizen of Kansas is first placed upon his own honor. That honor is supported a little bit by the criminal law, which says it is perjury if he swears falsely. He lists his deposits himself first, and then there is a column right alongside of his values, for the assessor to whom this statement is made, to give his value. In Wabaunsee county an old gentleman had something between forty and fifty thousand dollars, but he forgot it. He made out a long list of personal property and swore to it, and the county clerk was of the opinion that the old gentleman was worth more. The county clerk invited him to come in. He did not have time to come at first; so the county clerk and the county attorney came up and visited the State Tax Commission, and the State Tax Commission told them to go back and serve the notice which is provided in our statute; that notice fixes a time when the county clerk puts on the tax roll the amount he determines ought to go on—and that if the old gentleman did not come in they should put on good and plenty. That was our instruction. The old gentleman came, and they found out exactly what he had on deposit, and it was a little over forty thousand dollars. We went back five years. We have that scheme attached to it; and we can add fifty per cent penalty, and instead of getting forty thousand dollars of value, he paid over forty thousand dollars in taxes. Going back over five years they got over ninety-three thousand dollars.

MR. ZANGERLE (of Ohio): May not this discussion be continued after lunch?

CHAIRMAN MONIER: That will be in the hands of the Chairman after lunch. I am going to ask for an announcement as to the resolutions committee at this time.

MR. C. J. TOBIN: There are a few states that have not handed in the names of the persons who are to be members of the committee on resolutions. Those states are Alabama and Wyoming. Michigan has handed in two names, so that it will be necessary for the delegates appointed there to meet again and give us one name. I shall call the list of persons who have been designated as members of the committee on resolutions; and it is the purpose of the chairman to call a meeting immediately after this session closes in this room, so that we may get down to business.

CHAIRMAN MONIER: President Bailey has an announcement at this time.

PRESIDENT BAILEY: I should like to remind the ladies present that there is a nice luncheon waiting for them.

We will adjourn to two o'clock, in this room. Kindly be prompt, so that we may commence on time.

(Adjournment)

THIRD SESSION

TUESDAY AFTERNOON, SEPTEMBER 16, 1924

H. F. LONG, Commissioner of Taxation of Massachusetts, presiding.

CHAIRMAN LONG: Having delayed about fifteen minutes, I think we will now start the afternoon proceedings. I will introduce myself by saying that my name is Long. I am the Tax Commissioner of Massachusetts, and also it may make you feel better if I say I am not going to make a speech.

We have for the beginning of this afternoon's entertainment Mr. L. R. Gottlieb, one whom we all know, at least by name and by correspondence. I am pretty sure that all of the taxing officials of the states of the Union have heard of Mr. Gottlieb. I know he corresponds rather freely with me, and I imagine he does with all of the other tax officials and those interested in taxation in other states of the Union.

As you know, we have restricted papers to twenty minutes, and it may be that some of them will have to be cut short. If they are warned beforehand, they may step a little livelier than they otherwise would.

It gives me pleasure to introduce Mr. Gottlieb to the conference.

THE FACTS AS TO GROWTH IN PUBLIC EXPENDITURES

L. R. GOTTLIEB
Of Research Staff, National Industrial Conference Board

Taxation did not exist in primitive society. The only collective need that asserted itself was that of common defense, and each member of the group contributed his services personally and directly in meeting this obligation. It is only when the political state arose that collective needs appeared in increasing measure and taxes were levied to meet these costs. At first the functions of government were, for the most part, repressive in character. The duty of the constituted authority was to inflict punishment on the person who violated fixed rules of behavior and acted in a manner deemed to be against the interests of the group. From mere police measures against the consequences of the violation of society's rules of conduct, there developed the preventive duties of

government which had, as their aim, the elimination of those conditions that gave rise to crime. It was found to be far less expensive to prevent the recurrence of violations than to wait for the law-breaker to act and then to punish him. Finally, the functions of government went beyond the punishment and prevention of crime and included measures designed to alter conditions of life so as to increase the happiness of those constituting the community or the nation. Better roads, waterways, canals, sewerage systems, sanitation and health measures, care of the aged, sick and infirm, better schools and libraries, extensive museums, zoological galleries, parks, mothers' pensions, soldiers' relief, public employment offices, and a myriad of other facilities have been and continue to be demanded by a progressive citizenry. The very transition from an agricultural to an industrial state and the congregation of large masses in urban centers in themselves have served to increase public outgo.

It should be remembered, however, that increased functions and growing populations are not the sole factors that have tended to enhance tax burdens and public expenditures. The falling purchasing power of money, as a result of the increase in the supply of gold and credit, which changed the price level throughout the world, has been an insidious factor in the past few centuries and of particular importance in recent decades. This circumstance has rendered the cost of running government considerably higher, apart from changes in number and quality of services rendered by governments. Increased wealth and income, such as the world has witnessed in the past few centuries, also gave rise to extravagance and thoughtlessness in disbursing public funds. Wasteful expenditures and inertia which pervade public service are additional factors which must be taken into account. The ease with which public authorities have been able to borrow funds, either as a result of peculiarities in the tax system or as an outgrowth of the greater confidence in public issues, has been an important element in the rise of governmental disbursements. Finally, the rise of nations and the development of the nationalistic spirit have caused unusually heavy burdens to be placed on citizens everywhere, for waging wars and preparing for international conflicts. In the past two centuries, it may be safely stated that more than two-thirds of all governmental expenditures have been on account of war and war preparation.

What are the facts as to public expenditures in this country? Has taxation increased faster than wealth and income? Have recent years witnessed any alteration in the upward tendency discernible in the decades preceding the World War?

Unfortunately, official data as to the disbursements of all public bodies in this country have not been available since 1902. The

latter year was the last period for which the Census Bureau, in its surveys of wealth, debt and taxation, undertook to cover all governmental authorities in this country. In 1913 the Census Bureau embraced in its investigation the Federal Government, all state governments, county governments, and all political units with a population over twenty-five hundred, but omitted data on political subdivisions under twenty-five hundred in population. In 1922 the survey was even more restricted. The census of wealth, debt and taxation for the latter year affords data as to expenditures of the Federal Government, state governments, and only cities of 30,000 population and over. County governments and all political subdivisions, i. e., cities, towns, villages, school districts, road districts, irrigation districts, etc., with a population of less than 30,000 were not covered by that investigation with respect to expenditures. Thus the student who is desirous of obtaining an approximation as to the amounts disbursed by governments in this country is forced to make his estimates on the basis of the taxes raised, the amount of other revenue received, the funds received by borrowing and changes in the cash balances at the beginning and at the end of the fiscal period.

First, let us examine the figures on taxation. The National Industrial Conference Board has been collecting for the past few years figures on taxes levied by all governmental authorities and I believe it is the only organization that continues to carry on this work from year to year. Tax data relating to the Federal Government and to the various state governments are readily available from the annual reports of state and federal comptrollers, auditors, treasurers, tax commissions, etc. The total volume of taxes levied by local authorities has been annually estimated on the basis of the amount of taxes levied by governmental units under the general property tax, with estimates made for miscellaneous taxes and licenses, other than those for automobiles (full data being available as to the latter) which they collect entirely for their own use or share with the state. Even here difficulties present themselves. Not all the states collect figures bearing on general property tax levies for purposes other than the state government. Only twenty-eight states show data on the levies for all local government purposes and seven, in addition, show levies for county purposes only. For the remaining thirteen states, situated for the most part in the South, no data whatever are available as to levies of the general property tax for local government purposes. In view of the fact that the states for which data are available raise about 80% of the levy of general property taxes, the estimate for the whole country, on the basis of the figures collected by the United States Bureau of the Census every ten years, probably involves no material percentage of error. The major portion of local government revenues

is derived from the general property tax, averaging from 90 to 95 per cent in recent years, and with use made of local tax levies as officially published, the percentage of error in estimating the total tax burden cannot be of any great consequence. There are, of course, uncollected tax levies to be reckoned with, but these nevertheless constitute a prior lien on the property subject to taxation, and if not paid within a reasonable period the liability to the municipality or state is liquidated by forced sale of the property. Errors due to this factor will in the long run "wash out".

Our investigations have shown that the amount of taxes raised by the Federal Government rose from 374 millions in 1890 to 668 millions in 1913, an increase of approximately 79 per cent. Thereafter the taxes exacted by the Federal Government rose rather rapidly until in 1919 the amount was 5069 millions; in 1921, 4430 millions; declining to 2802 millions in 1922,[1] and rising again to 3223 millions in 1923.[1]

Taxes raised by state governments increased from 96 millions in 1890 to 307 millions in 1913, a more than two-fold increase. In 1919 taxes raised by the state governments had increased to 570 millions, in 1921 to 783 millions, in 1922 to 858 millions, and in 1923 to 882 millions. Taxes raised by all other governmental authorities, termed "local" (i. e. county, city, town, township, village, school district, road district, irrigation district, etc., governments) amounted to 405 millions in 1890, rising to 1219 millions in 1913, a two-fold increase. By 1919 the local tax burden had increased to 2395 millions; by 1921 to 3150 millions; by 1922 to 3301 millions, and by 1923 to 3601 millions. The total tax burden of the nation increased from 875 millions in 1890 to 2194 millions in 1913, 8034 millions in 1919 and 8363 millions in 1921, 6961 millions in 1922[2] and 7716 millions in 1923. Taking the year 1913 as the standard and expressing all figures in terms of dollars of a common purchasing power in that year (i. e. on the basis of the index number of wholesale prices), we find that the total tax bill of the nation has been growing from 1080 millions in 1890 to 2194 millions in 1913, 3900 millions in 1919, 5689 millions in 1921, 4739 millions in 1922 and 5010 millions in 1923.

Thus it appears that the recession in the volume of taxation in 1922 was rather short-lived and that an upward tendency was again indicated in 1923 which, it appears from preliminary figures at hand, will most likely continue in 1924.

[1] These figures take cognizance of the amount of taxes refunded, covering previous years.

[2] This figure differs from the one contained in Research Report No. 64, page 13, in that cognizance was taken of taxes refunded and of revised tax collections.

It may perhaps be contended that a materially larger portion of our entire tax revenue is now devoted toward payment of interest on the public debt and of pensions than in pre-war years, which latter items go to swell the totality of national income and hence to that extent do not detract from the funds available for industrial uses. A detailed study of the data bearing on this point indicates, however, that the rates of increase in the gross and net burden of taxation do not differ widely. In 1913, federal, state, and local governments disbursed 208 millions on account of pensions and 224 millions for interest on public indebtedness;[3] in 1923 these amounts were, respectively, 330 millions and 1447 millions.[4] After deducting these respective amounts from the national tax bill for the years in question, it is found that the increase in the revenue taken away from industrial uses was 237 per cent, compared with a growth of 252 per cent in the gross amount of taxation during the same period. It is, therefore, an unquestioned fact that the burden of taxation on industry, using this term in the widest sense, measured in terms of dollars, is three and one-half times as high as before the war. Measured in terms of comparable purchasing power, this burden is two and one-third times as high as it was in 1913.

Before the war, state and local taxation in bulk had played a more important role in the total tax bill of the nation than federal taxation, but during the war, state and local government needs were submerged beneath the huge requirements of the Federal Government, with the result that the former were consigned to a subordinate position. After the Armistice, federal taxation continued to rise, but two years later, especially after the adoption of the budget system, the axe of economy was begun to be applied, and this, coupled with the depression in business and a reduction in earning power on a basis of which the revenues of the federal government are largely determined, served to lower the tax burden considerably. Meanwhile, state and local governments, no longer feeling the urgency of restricting their outlays and stimulated by favorable borrowing rates, partly as an outgrowth of federal income tax exemption, embarked on elaborate road-building programs. Ambitious improvement projects have also been undertaken on no small scale, causing not only an increase in current tax burdens but large accretions in their bonded indebtedness, which now is more than two and one-half times as high as it was in 1913. With rents on a high level, due primarily to the scarcity

[3] National Bureau of Economic Research, Income in the United States: Its Amount and Distribution, 1909-1919 II (New York), pp. 216, 218.

[4] Estimates based on the annual report of the Secretary of the Treasury, 1922, and such other data as have been gathered from miscellaneous sources.

of housing facilities, assessed valuations of municipal real estate have been considerably raised, which circumstance has enabled local governments to increase tax burdens beyond the point where resort only to increased tax rates would have otherwise permitted.

Before the war, the amount of taxes raised by state and local governments constituted about seven-tenths of the total tax bill. During the war this ratio had declined, but by 1921 the percentage raised by state and local governments represented one-half of the total. In 1922 the ratio of taxes levied by state and local governments to the total tax bill was 57 per cent and in 1923 it was 58 per cent, thus indicating the growing importance of state and local tax burdens in recent years.

In view of the fact that all taxes must ultimately be paid out of income of current or past origin, it is interesting to observe the relationship between these two factors. In 1890 taxes represented 7.2 per cent of the national income; in 1903, 6.7 per cent; and in 1913, 6.4 per cent. This was more or less the tendency throughout the world, for national wealth and income had been growing faster than the tax burden. During the war the tax burden began to grow much more rapidly than national income, so that by 1919 the ratio was 12.1%; by 1921 it had increased to 16.7%; but by 1922 it declined to 12.0% and by 1923 to 11.6%. Thus about one-eighth of the national income goes toward the support of governmental authorities in this country, as compared with one-sixteenth before the war. Because the recession in national income in 1924 is likely to be appreciable and in view of the continued rise in the volume of taxation, it is highly probable that the ratio of taxes to income will be higher in 1924 than in the preceding year.

Taking into consideration the amount of taxes raised in 1923 and other revenue collected and the amount of bonds issued during the year, and allowing for changes in the cash balances at the beginning and end of the year on the basis of available data, it is estimated that the total governmental expenditures in that year were 10,045 millions or 15% of the national income of that year. This percentage compares with 8.3% in 1902 and 7.6% in 1890. Only a small portion of this increase is due to the enhancement of commercial activities of government in the intervening period. Of the total for 1923, 3459 millions represent the amount spent by the Federal Government;[5] state governments spent 1450 millions and local governments disbursed 5428 millions. An idea of the magnitude of these figures may be gleaned from the fact that the combined disbursements of all governmental units in this country represented 93% of the total amount paid out in wages and salaries by all the manufacturing plants of the country, as ascertained by the 1921 census of manufactures.

[5] Postal deficit only included.

The volume of governmental business has thus been growing very rapidly. There is a constant urge on the part of a fairly large element of our population to have our various governmental authorities extend their fields of operation and to perform on a larger and larger scale many services that are now furnished through private initiative. The principal services of government in the past have been of an intangible and non-material nature, such as education, promotion of health, stimulation of art and its appreciation, etc. There is, of course, no standard by which the results of these services can be evaluated, but it suffices to say that no community can be truly happy without them. They constitute a necessary and essential adjunct of our present civilization and mode of living. In recent years, however, the commercial features of government service have slowly begun to make their appearance and are coming more and more to the fore. This circumstance raises many questions of grave importance beyond the scope of this paper, but it is high time to stop and think whether the change from private to public industry has yielded and will continue to yield a full *quid pro quo,* in a great many instances.

The growth in the public payroll and in tax burdens ought not to be deplored, if it signified merely a corresponding increase in the performance, on a collective scale, of such functions as were previously undertaken by private individuals, for the services of government are just as productive in the economic sense as those of private industry. There are very few today who will accept without considerable qualification the golden maxim of the French economist Léon Say, the famous French economist of an earlier day, that "the very best of all plans of finance is to spend very little, and the best of all taxes is that which is least in amount." It is merely a question whether or not the final cost to the community is larger in the one case than in the other, i. e., whether or not it is true that there is less efficiency, greater waste and extravagance, more room for corruption and fraud, less initiative and more inertia under government than under private operation. This is after all the crucial consideration, and only in helping to answer this question and to guide us in moulding future policies are the facts and figures presented above of interest and value.

Furthermore, it is not only essential to keep a watchful eye on the public outgo and keep down the volume of taxation to the minimum, consistent with the requirements of our present civilization, but it is also necessary to study the administration and distribution of our taxes, with a view of correcting evils that are now found to exist. It is a well-known principle that in rendering a tax system successful, administration counts for nine-tenths and law for only one-tenth. To cite but one instance; the statutes or constitutions in all states require that all property be taxed uni-

formly and equally. The law is perfectly plain on the matter. Yet there are thousands upon thousands of instances where inequality of the grossest form exists, as between property in the same taxing district or as between taxing districts. This evil is attributable to faulty administration and not to deficiencies of the law. The psychology of the taxpayer ought always to be studied thoroughly, with a view to eliminating irritation. Administration which outrages the standards and sensibilities of the business community causes needless inconvenience and procrastination, works in a cumbersome and inefficient manner, and enhances manifold existing burdens. The National Industrial Conference Board has, for example, made a special study—with the aid of a special committee, some of whom are present here today—of the administration of the federal income tax, and has been instrumental in bringing this whole matter before the attention of the country, at a time when acrimonious partisan debate on rates of taxation was rocking the walls of Congress and administration was being ignored.

As to equitable distribution of our tax burden, it is clear that some classes bear more than others. It is, of course, realized that absolute equity in fiscal matters is almost unattainable. According to McCulloch's adaptation of Pope, "Whoever hopes a faultless tax to see, hopes what ne'er was, or is, or e'er shall be." Nevertheless, relative justice is attainable, and wherever flagrant instances exist of this circumstance, it is the duty of the community to investigate and remedy the situation. The penalty of inertia in such cases can be nothing short of disastrous. The National Industrial Conference Board has, for example, made a study of the farmer's tax burden. No doubt there are other classes in the community that are in a similar plight. More attention should be paid to sound principles of incidence of taxation, for, as we all know, not all taxes are shifted to others, so as to become a charge on the community at large. This persistent fallacy has served to deceive many people as to the true nature of their burdens and has enhanced the maldistribution of taxation.

These and similar problems agitate communities everywhere. It requires courage, foresight and expertness to handle them. They bristle with complications of a political, economic and sociological nature. But if the game is worth the candle, nothing should be allowed to stand in the way of removing tendencies and deficiencies in our tax system that are threatening to undermine the whole economic structure.

CHAIRMAN LONG: I know that. I voice the sentiments of all in regretting that we haven't a longer time to allow for such interesting papers as Mr. Gottlieb has given us. We have crowded into

the afternoon and into all of these sessions a good deal of importance, and we have to pass over it rather rapidly.

I have been requested to announce that the subcommittee of the resolutions committee is to be composed of Mr. George Vaughan of Arkansas, Mr. C. P. Link of Colorado, Mr. Alexander Holmes of Massachusetts, Mr. S. E. Forney of Ohio, Mr. W. G. Query of South Carolina, Mr. J. G. Armson of Minnesota, and Mr. John C. Watson of Illinois; and I wish also to announce that if any of you wish to offer resolutions, they may be read at the beginning or at the end of any of the sessions of the conference.

Massachusetts was very much interested in the change which this conference started on last year, namely, to consider the question of expenditures as well as the question of taxes. We have devoted a good deal of our attention to the question of taxation, and not so much to the question of expenditures, which after all is the vital part of the taxation of the people. We in Massachusetts have been laying taxes ever since about 1620. We haven't a perfect tax, although we have tried a good many and have had a good deal of experience, but we are making some progress. We have made a great deal of progress, like every other state in the Union, in the expenditure of money, and one of the greatest of our expenditures of money budgets are the educational budgets. Perhaps we are going to have something now to show us how to spend less money on education, perhaps more; it gives me pleasure to introduce Dr. C. C. Plehn of the University of California, who will speak on expenditures for education, and this paper will have to be cut down to the limit rule.

I might say also that it might be well for us, as we discuss these things after the papers are read, to make a memorandum of questions we may wish to ask the speaker, so that we may have a diversity of questions, and I hope that those who were too modest this morning to ask questions will this afternoon enter into the discussion. Dr. Plehn.

EXPENDITURES FOR SCHOOLS

CARL C. PLEHN

Flood Professor of Finance, University of California

The National Tax Association has seldom devoted attention to questions of public expenditures. Yet spending is the purpose of taxing. All our efforts to establish the principles of equity in taxation may easily be set at naught by unwise expenditure.

The statistics relating to public expenditures in the United States are neither as illuminating nor as convincing as one could wish. The deeper one goes into them, the more one examines the de-

tails, and seeks their ultimate meaning, the greater is one's discontent. Of the great divisions, school expenditures are probably better reported than are some of the others. Especially commendable are the reports on school finance by the United States Bureau of Education. These seem to me to be very nearly as complete and accurate as it is possible to make them. Yet at that, there is much left to be desired. The trouble is that there is so very, very much that is impossible. When one considers educational expenditures, or, for that matter, any others, it is the quality of things one must know in order to pass judgment and the figures given are for quantities not qualities.

The grand totals of school costs reported are, so far as I can see, accurate; that is, we can accept the figures given for all expenditures and for the main classes, state by state, and district by district, as correct. But beyond that one is never sure. Even the totals, one feels, do not embrace the same contents. To be sure, they are all expenditures for "schools", but we know positively that they are not for the same sort of schools. "Pigs is pigs," even if some are guinea pigs, and schools are schools, even if they do not educate. Yet, how exceedingly vital it is to know how or what they educate!

Especially difficult are comparative data. Possibly the greatest cause of this is the diversity of government. Thus, in some states the schools are a matter of local government, being maintained by districts, towns and cities. In others, the counties run the schools and pay for them in a large part. In others the state helps. In Massachusetts and in fifteen other states over 80% and up to 90% of the cost of schools falls on local treasuries. In California today a bare quarter falls on the district, but the state and the county, which is only an arm of the state, pay the greater part. Such variations in government not only make comparisons difficult, if not impossible, but complexities, such as the existence side by side of the local districts, union districts, high school districts, municipal districts, county schools, and the many grades of schools, introduce errors and duplications into the figures. The chances of error increase in high geometrical ratios every time funds pass from one spending body or branch of government to another, or are split among different purposes.

Another difficulty with comparative studies of school finances arises from the lack of uniformity of accounts. A good many years ago I was privileged to be associated with Mr. L. G. Powers, of the Census Bureau, in an effort to inject into our fiscal statistics some factors of uniformity in classification. The Census Bureau has ever since then been a powerful force in furthering the plans then formulated. But the difficulties are enormous, and I begin to fear they are insuperable. Not only are there diverse purposes,

inimical to uniformity, which the accountants and their books must serve in the different states, but there are the whole series of "funds", resulting from our legislative methods of appropriation. When an appropriation is made, there is established thereby a "fund", tied to the purpose of the legislation. Funds of the same name seldom have the same purpose.

Naturally and of necessity the accounts must be auditable. Now, the primary purpose of a government audit is the discharge of the disbursing officer from responsibility for the funds entrusted to his care. To that end it must be shown (and certified) that the expenditures were made according to law and within the appropriation, and that all of the funds are accounted for. This purpose is paramount and any recasting of the accounts of a state, a county, or a city, so that the political, economic and social purposes served by the various funds or appropriations may be seen is and must be of secondary importance, in the eyes of the auditor. Even if the accounts are recast in this way, it becomes of third rank importance to the accounting officials to recast them again, to make available satisfactory statistical comparisons on bases uniform throughout the country. The point of all this is that we have to go back of the statistics to get at the real meaning of the expenditures.

While we may deplore, and are certainly embarrassed, in any studies of comparative finance, by the lack of good statistics, we are forced to accept the situation. We cannot remold our governments to make them uniform, nor require the thousands of auditors and accountants to work overtime on uniform statistical reports. The few statistics I propose to give you are to be taken, not merely "with a grain of salt," but it may be they should be well sprinkled with a whole shaker full of salt. All I can say is that they are the best I could find.

Of first-class literature dealing specifically with the correct principles of school finance, I regret to report that I have found but little, although I have examined a mass of printed matter. There are many eloquent pleas for more money for schools, but few of these, so far as I can observe, show where the added funds prayed for are to come from. The source seems, in the minds of the writers, to be quite a secondary or wholly unimportant consideration. They show a sort of blind faith that the "Lord will provide," if only the legislature or the people will appropriate. Thus, in a series of three remarkable lectures, reprinted some twenty years ago, in a little book entitled "More Money for Public Schools," President Eliot of Harvard made a conclusive, or certainly a very convincing, argument that the schools were then in need of more money. But he dismisses the question of sources with a blunt dictum of denial of any lack of public funds. He

says: "I know that some people will say that it is impossible to increase public expenditures in the total, and therefore impossible to increase it for schools. I deny both allegations. Public expenditure has been greatly increased within the last thirty years, and so has school expenditure. What the country has done it can do again; and, furthermore, it can better its past record." He asked for five times as much money. We shall see that the schools have now at least three times as much *relatively,* as they had when he wrote. They have over five times as much in absolute amounts, over $1,000,000,000 a year against $200,000,000. But this cannot go on forever. Threefold every twenty years is a rate of geometrical progression quite appalling.

This statement of Dr. Eliot's is, of course, a dogmatic assertion, without proof. It amounts to saying that since a man has once made two blades of grass grow where one grew before, he can make four grow there, then eight, then sixteen, and so on *ad infinitum.* It may be so, but then again it may not.

In many other books on school expenditures, the assumption that more money can be had is even more naively made than in the outstanding one to which I have referred. In too many cases we are left entirely without an attempt to prove that more money can be paid for education, without destroying the sources.

Now, there are two central ideas which occur and recur to me as I study this subject. One is that there is a limit to what a brain can hold and, more directly important, a limit to the time which boys and girls can devote to going to school. Since there is such a limit of time, there is also a limit to what they can absorb or learn in that time, even if their brains were unfillable reservoirs, which they are not. Hence there is a limit to what has to be done or may be done in the schools.

The second idea is that the funds of the community which can be taken by taxation are likewise limited, and hence, as the schools are but one of many activities of government, there is a limit beyond which school funds cannot be increased. Dr. Eliot's dogmatic denial is not convincing.

I do not mean to say that either of these limits is inelastic. But even a rubber band can be stretched to the breaking point. Let us examine for the moment the elasticity of the first limit. That is, of the pupils' ability to learn *in a given time.* There are, we have been told, savages incapable of counting beyond three or four, while we know, also, that the Germans counted paper money in terms beyond even our comprehension, trained though we are in high finance. Now, in some parts of the country, high school boys and girls have been successfully taken through Calculus, and I know of some who can even understand Einstein and the fourth dimension. It may be that future generations will be able to think

in four dimensions, as easily as, or should I say, with no more difficulty, than we now think in three. Yet, at present few pupils can get, before they leave the high school, much beyond trigonometry, and the few in all the world who can think in more than three dimensions are probably as scarce as those savages who cannot count beyond three. Still it is apparent that as the race progresses, and as knowable things multiply, the limit of absorption of mental power moves out or up. More important, however, for our present purpose is the bearing of this on comparative school costs. The Boston "schoolmam" is shocked to hear how little *per capita* Alabama spends on schools in the black belt. But she is, at the same time, quite convinced that a little Beacon Street boy has more power to learn than a pickaninny from the shores of Mobile Bay. Before we say, then, that Alabama is not spending enough on her schools in the black belt, should we not take into account how much learning the little black boys can take in?

The limit of mental ability and of time available for schooling, while not fixed, and though it varies from one community to another, and from one pupil to another, is nevertheless at any one place and time a very important reality.

Let us now examine the other limit. How much can the taxpayers afford to pay for all government functions and how much for schools? This question cannot be answered quantitatively, either in terms of so and so many millions, or in terms of a percentage of the people's resources, whether measured in property or in income. We cannot say that city taxpayers can afford only $1 per hundred of the assessed value of their property, or *not over* 10% of their incomes. The way the money is spent is quite as essential as the amount paid. The *ancieme regime* in France impoverished the people, not by heavy taxation alone, but by government waste and extravagance. It was the King's mistress, not the King's tax-collector, who broke the peasants' backs. A community may well afford to pay heavy taxes for good schools and mightily ill afford to pay low taxes and go without schools. One element, therefore, in the elasticity of this limit is the strength or weakness of the government and the value of its services. In not a few directions government spending creates a taxable surplus. I doubt if it does or should do so in schools. Another element is the expansive power of the industry of the community. It is certain that there are limits to this, but obviously they are not fixed limits. Land cannot be made infinitely productive, horse-power cannot be indefinitely multiplied, even by super-power plants, and human beings tire of working. Moreover they tire of buying. Each human want is satiable. Even the market of automobiles has a point of saturation.

Furthermore, there must be a due proportion in all things.

Taxes are derivative, and there must be a part of each man's income left in his pocket, and not taken by taxes, or he will be discouraged and not work. Then, too, it would be small good to spend all the public money on schools and neglect everything else, for the pupils might all be robbed or murdered on the way to school, if there were no policemen. If there are no streets, how can the children get to school?

How much *are* we spending on schools? To present the most pertinent figures in simple fashion I propose to take some of the data which President Eliot used in the book referred to, and which he thought presented fairly the state of things twenty years ago, and then I shall try to add the corresponding data for the present time.

"The average expenditure per pupil," said Dr. Eliot, "for the whole school year in the United States was then (1900) $21.14."

It is now, 1920, $64.16—more than threefold.

"But," continues Dr. Eliot, "this expenditure varies very much in different divisions of the country. Thus the average expenditure per pupil in the North Central Division of the United States is $33.52, while in the South Central Division it is only $7.54." The corresponding figures for today by this grouping of states are not available, but I shall give, in a moment, comparisons of high and low states.

"It also," says our author, "varies very much in the different states of the Union. Thus the highest expenditure is made in New York, namely, $41.68; the next highest in the District of Columbia, $40.50; the next highest in Nevada, $39.70; the next in Colorado, $38.29; the next in Massachusetts, $38.21." There are, of course, all sorts of fallacies in the suggested comparisons, but we must pass them by.

But in 1920 New York was outranked by eighteen states. Nevada showed the highest figure, with $130.25 annual cost per pupil; Montana, $133.06; Wyoming, $112.37. Leaving out the new states with large per capita wealth and relatively few children, we may cite Massachusetts with $78.68, California, $101.86, and New York, $77.88.

"On the other hand," says Dr. Eliot, "the lowest expenditures occur in the South Atlantic and South Central Divisions, North Carolina spending annually $4.56 per pupil; Mississippi, $6.48; Georgia, $6.68. The Western Division (which includes the Pacific Coast) has in general a high average expenditure per pupil, coming next to the North Atlantic Division."

We cannot precisely duplicate these figures, but we have for 1920: Mississippi, $21.06, South Carolina, $19.99, while North Carolina has risen from the bottom to the sixth place above, with $25.65. There is an even wider difference between the extremes

of high and low than there was twenty years ago, even though the low figures are higher now.

Another interesting figure is the average daily expenditure per pupil. Twenty years ago this was, for the United States as a whole, 14.7 cents; in 1920 it was 40 cents, of which 34 cents was for current expenses and 6 cents for outlays. Again the range is enormous, running from 13 cents in Georgia to 78 cents in Nevada. New York spent 42 cents; Massachusetts, 44 cents, and California, 59 cents per day per pupil, in 1920.

Dr. Eliot did not present the cost per capita of population. But, possibly for our purposes this would be a significant comparative item. We have this for every five years since 1870, except for 1875: 1870, $1.64; 1880, $1.56; 1885, $1.96; 1890, $2.24; 1895, $2.55; 1900, $2.84; 1905, $3.53; 1910, $4.64; 1915, $6.03; 1920, $9.80.

This series suggests the question as to the value of money or the level of prices. The 1870 cost was in paper money, hence the drop in 1880, after the resumption of specie payment, was in fact an advance in cost. The rest are all gold costs, but of course there is the question of the fall in the value of gold between 1915 and 1920. Suppose we correct this, taking the present price level as 140% of the pre-war level. Then we still have $7.00 in 1920 to compare with $2.84 in 1900 and even with $6.03 in 1915.

It goes without saying that there is the same variation between states in these figures as we found in the other series, for of course they are basically the same.

While, as has been said, these figures are subject to question and full of difficulties of interpretation, they are sufficiently accurate for some general purposes. The following generalizations are fairly safe. The cost of schools per capita of population has increased over threefold between 1900 and 1920. The cost per pupil per annum increased in about the same ratio and the cost per pupil per day a little less, or 2.8-fold, or corrected for the shift in the value of money, 2-fold.

Meanwhile (drawing now on another set of statistics) the ratio of children of school age, to the total of population, decreased from 28.3 per hundred to 26.2 per hundred, although, because relatively more of the children go to school, the ratio of pupils to population has remained about the same, 20.5 per hundred.

The increase in relative cost is therefore not explainable by any increase in the number to be educated; for relatively, that is less. The people are not as prolific as they were. Nor can it be explained by more children in the schools, for that is the same.

But the schools are now in session more days each year. In 1900 the average was 144.3 days per annum per pupil; in 1920, 161.9, an increase of 12%. Then, too, those who went to school

attended more regularly. In 1910 they attended 99 days; in 1920, 121.2 days, an increase of over 20%. These items might explain a part of the increase in cost, although but a trivial part, were it not for the fact that these increases should easily be covered by the economies of large-scale operation, for it certainly should be cheaper per pupil to teach 21,600,000 than to teach 15,500,000, if the amount taught, or things studied, be the same.

Next, we observe in the same set of statistics that the number of pupils per teacher decreased from 36.6 to 31.8, requiring over four more teachers for every 1000 pupils, or 31.4 against 27.1. In part this is due to the increase in pupils in the high schools, where the classes are small. Then, we observe that the average teacher's salary has increased from $325 in 1900 to $871 in 1920, despite the fact that the proportion of men teachers dropped from nearly 30% to 14%. Even if we correct the salary for 1920, by allowing for the fall in the value of the dollar, it is still $620 for comparison with $325.

Right here then we have found an appreciable item of increased real cost. To teach 1000 pupils used to cost $27.1 \times \$325$, or $8,800, and now costs (corrected for the difference in the dollar) $31.4 \times \$620$, or $19,500 (uncorrected it is $27,300). Since salaries are now 59.2% of the total costs and were 64% in 1900, we have found here an explanation for a large part of the increase which we found in the relative figures before.

But, what about the other expenses? These we can ascertain in two groups. Buildings and grounds took in 1900, 16.5% of the funds and dropped to 14.8% in 1920, and "all other purposes" increased from less than 20% in 1900 to 26% in 1920. But we must not be misled by these percentages, for there was an increase for sites, buildings, furniture, libraries and apparatus from $35,450,000 per annum to $153,540,000 per annum, in twenty years. The former cost housed 15,500,000 pupils and the latter 21,600,000 pupils, or over four times as much per annum to house less than 40% more pupils. I am quite aware that these figures as to buildings are shot full of statistical errors, and include investment in new structures as well as true annual costs. But that affects one set about as much as it does the other, 1900 as much as 1920, and they are general for the United States as a whole. Here then is another large item of increase.

More startling still is the increase in "all other purposes". In 1900 these were $41,800,000; in 1920 nearly $270,000,000, or nearly six and one-half fold. Per 1000 pupils, buildings used to cost $2300 and now cost $7,100, and "all other purposes" used to cost $2,700 and now cost $12,400.

Before leaving the dry figures, one more set must be mentioned. School property is valued at $2,400,000,000 and the debt is $652,

000,000, both for 1920. The schools are not quite three-fourths paid for.

Leaving these tedious figures, let us attempt to answer the questions which they inevitably suggest.

First: Why is teaching so much more expensive? We found that each teacher got much more money and cared for less pupils. In general, when wages in any occupation go up it means that the product per worker is worth more, because of greater output, better quality, or greater skill. If these things be true of teaching, the 32 pupils each teacher now has are taught more than were the 37 each teacher used to have, or they are better taught, or the teachers know more. An examination of the curricula shows that the costly part of the *more* that is taught is new subjects, and some familiarity with the teaching leads me to fear that what each pupil receives is not as good teaching in quality nor so great in quantity (intensity) as it was, although it is much more diversified. The requirements in the way of teacher's training are distinctly higher, but I believe they are more costly for the teacher to acquire than is necessary, by reason of technical provisions and supervisory machinery, not at all certain to insure teachers who are really more efficient. It is probably safe to assume that the salaries of the nearly 700,000 teachers, regulated as they are by competition within and without the ranks, are not excessive. In most states the increases made to adjust teachers' salaries to the high cost of living occasioned by the war have been clumsy, resulting in some cases in too much and in others in too little increase. But on the whole, teachers' salaries are not above the competitive level.

The extravagance where it exists in the teaching cost lies, I am sure, in the teaching of fads and foibles, of subjects not entitled to a place on the school curricula. Of these there are a multitude. In support of his plea for more money for the public schools, Dr. Eliot argued that the schools failed to produce the results expected of them and as instances of that failure said, "We are seriously disappointed that popular education has not defended us against barbarian vices, like drunkenness and gambling, against an increase of crime and insanity, and against innumerable delusions, impostures, and follies." He found "masses of bad reading matter"; "foolish, false, or degrading narrative and fiction"; "medical delusions"; "stupid, wasteful, and ineffective strikes"; "unhappy marriages"; "the spoils system," and, finally, a generally arrested development of character. Now, as we have seen, the schools have relatively three times (not quite the five times, he demanded) as much money and still all these things he deplored continue unabated. Perhaps he was wrong in assuming that the schools could do what he hoped; perhaps the time has been too short.

On the subject of what is taught and as illustrative of fads and fancies I may refer to a recent episode in my own state. We have an "economy" governor, who went into office just after the people, by popular vote, had doubled the state's contribution to the common and high schools and nearly doubled the county's, without reducing the district's share. School expenditures went up so fast that we wondered whether the people would have breath left to say, "Ah!" when the rocket burst. Now, the only part of the school expenses on which the "economy" governor could curtail was that fringe of state administrative expenses, some few teachers' colleges, none too heavily attended, because the universities train many teachers, and other more or less ornamental features. Those officials who were affected by his economies felt badly and campaigned vigorously against him. One deputy who had lost his salary urged that "everything the people might want their children to learn must be taught in the schools," using as his favorite illustration "The training of beauty-parlor specialists".

Of course I recognize that teaching how to trim finger-nails, "bob" or curl hair, and massage wrinkled faces is carrying the suggested principle of teaching everything to an absurdity. But, the principle itself is absurd. Left to themselves many parents and many pupils would select studies which seem to lead, by some short cut, to earning a living, and would neglect the fundamentals, regardless of the fact that earning a *good* living requires developed brain power. The school authorities have a hard time of it protecting the fundamentals against the invasion of these so-called "practical" studies, and they have yielded to the pressure possibly more than is wise. If putting in a course in home decoration makes it easier to get a new teacher for spelling, arithmetic, or history, the compromise is made.

We found in the figures a strong suggestion of extravagance in buildings. There is, I believe no doubt about this. The sources are not far to seek. First, there is local pride and inter-city or district rivalry, which leads to unnecessarily ornate and costly structures. The only essentials of a good school building are; light and air, sufficient floor space, and adequate protection from storms or sun and cold. A very simple structure satisfies these requirements. The school building may be very beautiful, *if the community can afford it*, but all too frequently much more money is spent than can be afforded, and too much is spent on non-essentials. Another source of high building cost is the assumption of permanence which invites to excess. School buildings that are far from worn-out pass out of fashion and become inadequate, for other reasons, long before they were originally expected to be discarded, sometimes before they are paid for. Finally, too easy money leads to extravagance in school building. School bonds are

fairly safe investments and the willingness of bankers to lend, the low rate of interest, and the specious plea that "taxes will not be increased very much if you vote this bond issue," has led many a community into extravagance.

The little red school house, taught by the school "marm", who boarded round, heated in winter by swamp wood, burned in a primitive stove, attended by urchins who came on foot, in summer usually barefoot, and governed by a board of neighborhood farmers is passing away in more senses than one. In some ways this is a great pity, for the constant training in true democracy, not merely in the inculcation of the feeling of equality, but in the sense of an intimate control by the people of the public affairs, was as important for their elders as readin', writin', and 'rithmetic, was for the children. Modern educational leaders tell us that the old school was inefficient; that schools should be large enough to employ several teachers, each for a different subject; that the buildings should be large enough to offer adequate space for more than recitation rooms; that there should be libraries, laboratories, work shops, and above all, a gymnasium, an assembly room, a cafeteria, and desks and other fittings of the most sanitary and beautiful type. This means more equipment, books, maps, apparatus, and many other things. To secure this, the contributory tax district must be enlarged, old school districts united and new and larger ones formed. To fill these larger buildings the children must be assembled in larger masses. This in turn calls for organization, high-priced superintendents, in place of the old school trustees (unpaid) and administrative bureaus of many sorts. We have already noted how specialization on the part of teachers has involved more training and led to higher salaries. This is also obviously one of the reasons for the stupendous increase in building cost. Out of it too springs the still greater cost of "other purposes".

At first sight it seems the height of luxury and extravagance for a school department to furnish automobiles to bring the children to school, and to feed them at the public expense at noontime. Contrast that with the stories told of our great men, our heroes, statesmen, and captains of industry who walked unbelievably many miles each way, to and from school, with a cracker and an apple for lunch stuffed into a pocket. But the experts on education are not at all disturbed by this contrast. Thus, Prof. Updegraff, in a survey of the rural schools of New York, thinks it wise "to abolish schools with small enrollments and transport the pupils thereof to other schools." He asserts: "It will secure a large enough number of pupils per teacher, make it practicable to provide first-class school houses and adequate supplies and equipment, and thus greatly increase the quality of the educational product."

"Hence," he argues, "the waste of poor teachers and poor equipment at high cost is transformed into an efficient school at low pupil costs, but, he adds, "*without actual decreasing the tax-rate.*" This assurance against a decrease we may accept. He unfortunately gives no similar assurance against an increase of tax-rate. A little further along, however, he suggests that the expense may be too great without "state aid". While we are on the question of transportation we may note that the same authority sets up as standard costs thereof a van costing, "if large, $3500; if small, $1500," and the cost per pupil per day for operation at lowest, 16 cents, highest 23 cents. Dr. Eliot, quoted above, found the average cost per pupil per day *for all purposes* in 1900, 22 cents, and we found it to be 40 cents in 1920. It is to be assumed, I suppose, that some children would still walk to school or come in papa's car, or their own "cut-down Ford racers," so the transportation charge will not have to be applied for every pupil.

Now the centralizing of schools involves more than a new cost for transportation. In fact, the whole process reminds one of the story of the char-woman who was induced to put a blossoming lily on her window-sill. The lily led her to wash the window, then to put up lace curtains, then to repaper the walls, then to lay a new carpet, then to get new furniture, and finally to move to a new house in a new neighborhood. Thus, if children are brought to a school distant from their homes, they cannot go back for lunch. They must be fed at the school and, in the interest of equality and of health, fed alike, and ultimately at the public expense. Nor is this the end. Thus, for example, the daily trip in the van in winter requires extra clothing or special rugs and wraps and attendants. Then come the health nurses, dental inspection, special "gym" suits, and so on. How much further it will go, who can say? Free text books is another large and growing item under "all other purposes".

But, generalization concerning this whole class of expenditures is not very safe, as there is no uniformity throughout the country in this respect.

We must now turn to the sources of the money. The following table gives a view of them:

UNITED STATES AT LARGE — SOURCES OF SCHOOL FUNDS

In 1900

Permanent funds and lands	$ 9,000,000	or 4% of total
Local taxes	149,500,000	or 68% " "
State taxes	38,000,000	or 17% " "
All other	23,000,000	or 11% " "
Total	$220,500,000	

In 1920

Permanent funds and lands	$ 26,500,000	or 3% of total
Local taxes	759,000,000	or 78% " "
State taxes	134,000,000	or 14% " "
All other	50,000,000	or 5% " "
Total	$970,500,000	

The striking feature of this enormous increase is that much of it, over nine-tenths of it, comes from sources requiring approval by popular vote. A safe generalization is that it is relatively easy to secure the approval of the plebiscites to an increase in taxation for schools. That the increases have not been even greater than they are is, I believe, due to two things: (1) the moderation and common sense of a very considerable part of the school authorities themselves; (2) the exhaustion or approaching exhaustion of the principal taxes, especially the general property tax. School costs are, like other government costs, fast outstripping the increase in property values. While school costs have at least trebled in burden in the last twenty years, property values per capita have not even doubled. The steady increase in the tax burden on property, in particular on land, taking as it does an ever-increasing proportion of the total net income, works of itself a decrease, or a heavy reduction of the increase, in land values.

I am not sure that I fully understand the basis and computations on which Prof. Richard T. Ely supports the statement he recently made in an address reprinted this year by the Institute for Research in Land Economies, which was:

> "Taxes on farm lands are steadily and rapidly approximating the annual value of farm lands; and in a period varying from state to state, but in most of the states in a relatively short period—a period so short that some of us may live to see it, if the movement continues unchecked—the taxes will absorb farm land values, the farmers' land will be confiscated by the state and our farmers will become virtual tenants of the state."

But I should hesitate to doubt any conclusion reached by so painstaking an investigator and so careful a student as Prof. Ely.

The following analysis made, with California data as illustrative material, will be of interest, not perhaps on account of the figures which are peculiar to that state but on account of the method of analysis.

Taxes are levied upon the assessed value of the owner's interest in the land. The assessed value differs of course from the true value, but we can by investigation usually ascertain the true value. That value—the value of the private property interest in the land—is of course only a part of the aggregate value of the land, for the

taxes represent a public interest therein. Now all capital or selling values are, in last analysis, dependent on the net annual value or income, and equal a multiple of that net annual income, dependent, in turn, on the market rate of interest. Thus, if a man can reasonably expect an income, safe and regular each year, or one that will average over a period of years, of $1000 a year, from a piece of land which he owns, that piece of land ought to sell for $20,000, when the market rate of interest is at five per cent. Or it will sell for less if the market rate is six per cent, and for more if it is four per cent. Now, if in addition to the $1000 which the owner gets and keeps, the same piece of land pays $200 a year in taxes, the government's interest in the land may likewise be capitalized at 20 times $200, or at $4,000. Thus we have a piece of land worth in the aggregate $24,000, of which the government, a silent partner, owns $4,000 worth, and the private owner, $20,000. Now, in California twenty years ago taxes averaged less than one per cent of the true value, and the figures just quoted picture the situation, as it then was, fairly accurately. But today the taxes equal nearly one and two-thirds per cent of the true value of the owner's share. Of course, the original $1200 of total income, taxes included, has increased during the twenty years, probably to about $2400, but we may still use a net income of $1200 as the basis of calculation for our present purpose, because, whatever the actual income may be, every other factor stands in like proportion. With the new average tax rate the private property interest in every piece of land yielding $1200 in the aggregate each year, before taxes are paid, is only $18,000, against $20,000 twenty years ago, and the government's share has risen from $4,000 to $6,000. Or, if you prefer to consider the same piece of land, which as suggested now yields $2400, the owner's share which, had the tax rate not increased, would have been worth $40,000, is now worth $36,000, and the government's share is $12,000. In other words, this silent partner, who formerly enjoyed a sixth interest in the land, has elbowed in, until now he enjoys a fourth interest. I desire to print as an appendix to my remarks an algebraical formula, by which one can readily calculate the effect of any existing or other tax rate on land values.

If the land had not increased in productivity, and hence in value, there would, I imagine, be an awful howl going up from the taxpayers. But since what has really happened is that the government has in a sense taken its increased share out of the increase in land values generally, leaving to the owner less than he would otherwise have earned, the taxpayer has lost, as it were, something he never had in hand, so this confiscation of private property has gone on in a partially concealed or surreptitious way. The single-taxers tell us that this increase of value in land, so large a part of

which is filched away by the increase in tax burden, is an unearned value, and its confiscation is to be looked upon with complacency. This I wish to deny, and deny flatly. The increase in land values has been earned, earned by hard labor, by the investment of new capital in development, and by patient waiting and self-denial, all on the part of the owners. The government has reaped that which the owners have sown.

But to leave controversial matters, let us take the case of land that twenty years ago was fully developed, orchards, for example, in full bearing. Here we have, if we make proper allowance for the changes in the purchasing power of money, and for the reduction of the rate of interest, which goes on as industry passes out of the speculative era of early development, a heavy loss suffered by the owner out of his labor and capital invested in the land. Now the production of land cannot be indefinitely increased, and twenty years from now much more of the land will be up to full productivity. If by that time taxes have advanced to say two and one-half per cent of the assessed value, raised to true value, how will the account stand? The state as the silent partner will enjoy a full third of the income or be in effect owner of one-third of the land. Even in war times an income tax of twenty-five or thirty-three and one-third per cent is regarded as a very heavy tax. Yet that is already what the property tax imposes on land owners.

I am not prepared to say just how much the taxpayers can afford to pay, for as already stated, that depends a great deal on how good the government is, and what it does. The silent partner, who gets his share with such unerring certainty, whether the active partner prospers or fails, is not necessarily a mere parasite or vampire, and may be, indeed should be, a ministrant patron. But I *am* prepared to say that one class alone, a class diminishing in relative numbers, and already a small minority of the total population, cannot go on forever supporting institutions which grow as rapidly in burden as those which we have been considering, institutions whose growth is demanded by, and inures as well to the benefit of the vast non-taxed majority.

I hope that some day in the near future we may have an investigation to ascertain what proportion of the voters pay any taxes directly and consciously burdensome. Some few months ago I ventured the statement in print that "there is certainly not more than one direct or conscious taxpayer in every four voters and probably not more than one in seven." When school bonds are up for approval, those who will pay them are less than one in four, or one in seven, among the voters. This is perhaps a liberal margin of error, but I believe that out of your abundant experience you can confirm the general estimate. That the non-taxpayers, that is, those who pay no tax consciously, exceed the taxpayers in

the plebiscite is certain. It follows therefore that funds are often voted without any consideration of the effect on taxes. This is the root of extravagance in public affairs. It may not be wise to confine the vote to taxpayers only, but it certainly would be healthful if everybody who voted to increase public expenses knew that he or she would have to foot a part of the bill.

Here, unfortunately, we reach an *impasse*. To make those people who so cheerfully vote other folks' money for so-called social advancement, pay for what they vote for, would require new taxes, taxes of a sort we do not have, a real and effective personal income tax perhaps. But I would not, at the present juncture, advocate any new taxes. I should be surprised, also, if any other experienced tax man would do so. It has been found so difficult as to be almost impossible, when new taxes are instituted, to give due relief to those who have so long borne the brunt. New taxes are seized upon for new extravagances. The old taxes continue unabated and no relief is in sight.

Mr. W. Randolph Burgess, writing on the "Trends of School Costs" for the Department of Education of the Russell Sage Foundation in 1920, is one of the few advocates of more money for the schools (he wants the funds doubled) who gives consideration to the sources. He finds that 95.5% of school revenues in the cities which he studied comes from local and state taxes, which means, of course, that the schools are supported by the old general property tax almost entirely. This in turn means that real estate, and similar kinds of property, bear over three-fourths, perhaps much more, of the cost of the schools. Mr. Burgess further finds, what we all know so well, that school costs outstrip property values. His figures show that since 1880 property values as assessed, increased barely one hundred per cent in the 40 cities for which the study was made, while school costs increased over three-fold. He also finds that the schools are taking an increasing share of the whole of state and local expenditures. They are then, if these figures are reliable, one of the chief causes of the increase in tax burden.

Nobody denies that the people of the United States want good schools and can pay for them, provided the burden is equitably distributed. The question, therefore, comes down to one of the goodness or badness of the education given. Upon this much might be said. We have seen that much of the increased cost is due to things which, it is by no means certain, add to the quality of education. In fact, some of the most costly things are distinctly bad. The teaching of fads and fancies, ornamental and unessential subjects, which, considering the brief span of school days, can be introduced into the curriculum only by excluding the essentials, is one evil. Another is the tendency of the specialized teachers to

use experimental methods of easy approach, despite the fact that the brain requires exercise and hard, not lazy work, if it is to grow. Another is the tendency of specialized teachers to give to the immature, instruction in matters which are beyond them. Another is the tendency to extravagance and waste in school buildings and to still greater expansion of the expenses for "all other purposes". I have seen a "van" bearing the sign "City School Department" carrying children to school on streets fully served by an admirable street-car system. I wonder if the cost were 16 or 23 cents a day per pupil, for I happen to know that the street-car service cost only three cents per trip or six cents for the round trip for school children.

One of the worst evils, in my estimation, is the inculcation of the notion of dependence. One of the things on which school children are graded for promotion in many schools is called "co-operation". Now ability and willingness to cooperate with one's fellows is an excellent thing in its way. But, as it is taught, it becomes little more than ability and willingness to lie down on one's fellows, depending on mass action, instead of standing on one's own feet, relying on one's own initiative, strength, courage, and character. There is much that is good in theory about free text books, free rides to school, free lunches, health supervision, joint-school athletics, the daily meetings in the assembly room, and other forms of cooperation, which are characteristic of the larger schools, and are themselves the outcome of the abolition of the old district school and the establishment of the county and union schools. But entirely aside from the fact that the savings we were promised from this process of centralization, have not materialized, and the much-vaunted increase in efficiency is still problematical, there has been a distinct loss in those features of education which make for self-reliance, self-respect, virility and character. Co-operation, valuable as it is in its proper place and proper form, must be constantly guarded, lest it break down, as it does far too frequently, especially when it is compulsory, and result in turning out pupils who will be forever dependents, pensioners of the social body. Aristotle classified slaves into those who were "slaves by nature" and those who were "slaves by law". Both these have been abolished, nature to the contrary notwithstanding, but we are in grave danger of creating a new class who are "slaves by education," taught by our expensive forms of cooperation to lean on society and fearful, if not unable, ever to stand alone.

My conclusion is that if the schools improve in like measure as these costs increase, we need have little worry over the costs. We might then with considerable cheerfulness set ourselves to the task of arranging a more equitable distribution of the burden of these costs. But I fear greatly that if we test the results of the in-

creased expenditures during the last twenty years by the criteria of success set forth twenty years ago by President Eliot, we must still confess, as he did then, that "It is indisputable that we have experienced a profound disappointment in the results thus far obtained from a widely diffused popular education." The mere spending of more money has not, as he hoped it would, lessened the barbarian vices, prevented crime, abolished foolish, false or degrading narrative or fiction, removed medical delusions made for happy marriages and homes, or elevated our social and political or industrial systems. In fact, some parts of the new expenditures directly undermine what he set up as the ultimate and final test of success for schools, namely, "growth and development of what is called character." I fear that the schools have not improved in like measure as their costs have risen.

It is a grave condition for which there is no simple or single remedy. The only remedy is that these vast and complicated expenditures shall be carefully scrutinized, and justified, item by item, by those who are in responsible charge of their making. That is the essence of all economy, and under present conditions economy is a necessity.

APPENDIX

Tax Rates and Land Values

It is desired to have a simple formula for the ready computation of the effect of increases in taxation on the value of land.

Preliminary theoretical considerations. In the United States, when we speak of the value of land, we generally mean the selling value, or what is distinguished by men of taxes from the assessed value, by the term "true value". In this we differ from our British cousins who quite as often mean, when they speak of the value of land, the annual value or rental value, although they are usually more careful than we are to use some explanatory word such as "annual" or "capital" with the term value, to make certain of their meaning.

The value with which we are here dealing is then, in conformity to the American usage, that value or price which the owner of a piece of land could get, if he sold willingly, under ordinary or normal conditions of sale.

Theoretically this value is a multiple of the annual value, or rental value, or of the anticipated net product, income or use and enjoyment obtainable by reason of the ownership of the land. The multiplier, commonly called "the number of years' purchase," is a number ascertained by dividing unity by the market rate of interest. Thus, if good safe investments in land sell on a four per cent basis, that is equivalent to 1/.04 or twenty-five years' purchase; on a five per cent basis 1/.05 or twenty years' purchase. Assume that a piece of land, well developed and safely leased at

$100 a month, has an annual value of $1200. If interest is at five per cent, the land should be worth for sale twenty times the annual value, or $24,000; if at four per cent, twenty-five times, or $30,000. But the use of such a multiplier is a short cut to the calculation of the value, and not necessarily accurate, save under conditions which do not always obtain in the United States. In Great Britain, where land is often leased for such long terms as ninety-nine years and a day, the annual rental specified in the lease may be capitalized quite accurately, in the manner just suggested. But even there other considerations enter in, such as the value of the reversion, and the probability that the owner may get more or have to take less, when the current lease expires. In the United States, outside of some of the larger and older cities, long leases are comparatively rare, and the annual value realizable, even when it can be fairly safely estimated for a number of years ahead, is likely to be variable. The more accurate method then, and this applies even when the annual value is in part ascertainable from a lease, is to set down the series of annual incomes anticipated for each of, say, the next thirty or forty years, then calculate the present value of each anticipated payment, and then add them all together. This can be done readily by use of those tables, which show, at different rates of interest, the present value of $1.00, payable one, two, three or more years hence, or more quickly computed by the formulas used by actuaries. Sometimes, the annual value of land is spoken of as "running in perpetuity," and the use of a multiplier of so and so many years' purchase theoretically assumes that the basic annual value will run forever. But practically nobody pays an appreciable price for (or invests in) money to be received a hundred years, or even fifty years hence. Because, in the first place, even if calculated accurately, the present value of a dollar to be received a hundred years hence is very small. In the second place, business men and investors do not look ahead so far as eternity, or even a hundred years. The business horizon is somewhere at thirty to forty years away into the future.

In the United States, at least outside of the older and larger cities, resort is seldom had to any direct computation of sales values from the annual value, although some estimate of that value must underlie any sale. The reasons for this are many, but the chief ones are two; first, the fluctuating character of the annual value in new communities, which makes the figure too uncertain for use; second, the fact that a large part of our homes and farms are occupied by their owners, and the annual rental is taken in use and enjoyment and not in money. It is, nevertheless, true that land having a selling value has also an annual value, current or future, in money, or in use and enjoyment, which is the basis of the "selling value".

It must further be pointed out that the controlling annual value may be one merely expected or anticipated, and not yet currently coming in. A series of payments beginning, say, ten years or twenty years hence has a present value. Hence, land not at present in use at all may have a sound selling value.

In the United States, where the land is universally subject to the general property tax, there are, in point of fact, two parties interested in the land, one the owner or proprietor and the other the government in all its various branches. The government's interest or share is very real, for it gets its income—the taxes—right now and every year, whether the owner has any present income from the land or not. The annual value falls thus into two parts, one the taxes, the other the remainder, which belongs to the proprietor. Each of these parts may be capitalized separately, each has a capital value. The selling value, or true value, on which the assessment for taxes is made *is that of the owner's share only*. We do not ordinarily evaluate the government's share. But that may be done very easily by multiplying the taxes by the suitable number of years' purchase. Thus, if the annual taxes on a piece of land average about $200 a year and the market rate of interest is five per cent, the government has an interest, or a sort of estate in that land, worth $4,000. If at the same time the owner's share is valued for sale at $20,000 the tax rate (reduced to a percentage of true, *not* of assessed value) is one per cent, we may infer that the owner has the equivalent of a $1000 annual income. There are then a number of different quantities or values, which stand in very definite functional relations, one to another, that is, if one of them changes, one or more of the others will be changed thereby. These are, the annual value of the owner's share, the taxes, the capital value of each of these, and the sum of the capital values, which is the aggregate value of the land, the tax rate, and the market rate of interest.

Of these quantities, three are relatively easily ascertainable, and from them the others may be easily calculated. One is the selling value of the owner's interest, which can be ascertained from the assessed value by raising it to true value. The others are the tax rate, and the going rate of interest.

Let A stand for the assessed value raised to true value or the selling value of the owner's share or property.

Let r stand for the tax rate reduced to a percentage of the true value A. To illustrate, if land is assessed at 50% of the true value, r will be one-half of the nominal tax rate.

Let i stand for the market rate of interest.

Let c stand for the number of years' purchase or the reciprocal of the market rate of interest. Thus if land sells on a basis of 5%, $\frac{1}{i}$ equals $\frac{1}{.05}$ or 20.

For convenience it is desirable to have a symbol for the total value of the land, that is, for the sum of the government's share plus the owner's share, which we may call V. The government's share is c times the tax. But the tax is r times A. That is: $V = A + c\,r\,A$.

It is perhaps a little simpler to write this, $A + c\,r\,A = V$. This is the formula sought.

It will easily be seen that if V is the same at each of two periods

under consideration, and r is greater in the later period, c remaining the same, then A must be less. But, if V increases, an increase in r will change the proportion of the owner's share, A, to the government's share, $c\ r\ A$, without necessarily reducing A.

NUMERICAL EXAMPLES OF THE USE OF THE FORMULA

(1) At one time A is found to be \$20,000, r 1%, and c 20. Then $V = \$24{,}000$, $c\ r\ A = \$4000$, and the owner's interest in the land is $\frac{5}{6}$, the government's $\frac{1}{6}$.

(2) If at a later time the tax rate has advanced to r equals $1\frac{2}{3}\%$ and the annual value, and hence V, has not changed, the value of the owner's interest or share must be less. For since $A + 20 \times .01\frac{2}{3} \times A = \$24{,}000$, $1\frac{1}{3}\ A = \$24{,}000$ and $A = \$18{,}000$, the owner's interest in the land; while the government's share has increased to \$6,000. The owner's interest is $\frac{3}{4}$ and the government's $\frac{1}{4}$.

(3) If still later the tax rate rises to 5%, the net annual income remaining the same, then we have $2A$ equals \$24,000, or a fifty-fifty split between the owner and the government, each taking half the income and enjoying half the property.

(4) Again, suppose we find that a fair assessment indicates a value for A of \$36,000 and the tax rate is $1\frac{2}{3}\%$, as against a former 1% rate. What may we infer? The inference is that the property as a whole has increased in value from \$24,000 to \$48,000, and the government's share from \$4,000 to \$12,000. Of the \$8,000 increase in the government's share, \$4,000 is due to the doubling of its original interest, by virtue of the doubling of the annual income, and \$4,000 is due to the increase in tax rate. That second \$4,000 would have stayed in the owner's share had the tax rate not increased.

An interesting corollary is that when r equals i, the government's and the owner's interests are equal. Hence, in new communities where interest rates are high, the tax rates may be higher, without discouraging land development, than they may be in older and more settled localities, where interest rates are low.

Furthermore, since the essential features of investment are the same for buildings and for other forms of land development, such as grading, drainage or irrigation, planting of orchards and fencing, as for land, the formula is equally applicable to all forms of real estate and not merely to land.

CAUTION

The formula has been simplified so that it can be used by anyone who can do simple sums in arithmetic. But for that reason it is applicable only to the relatively simple problem here set. As already suggested in the text, the controlling element in all values—that is, the annual value—is often of a complexity far beyond the simple assumptions of the formula. Some of these are exemplified in my "Study of the Incidence of an Increment Value Land Tax"

(*Quarterly Journal of Economics*, May, 1918, Vol. XXXII, No. 3). The formula may always be used safely where A is definitely ascertainable. Other uses require some care, as we have several different quantities, each in functional relation one to another, for a full analysis of which the simple formula is insufficient.

Conclusion: The formula enables us to compute how rapidly, by means of an increasing tax rate, the "silent partner" or the government, may become the owner of a larger part of the land values. Since in settled communities, where land may be developed by 4% money, a 4% tax rate means a fifty-fifty split between the proprietor, who does all the work and takes all the risk, and the silent partner—the state—the question arises whether 4% is not the limit, beyond which the tax rate may not go without grave danger of less development of our landed resources than is socially and economically desirable.

Tables Showing Relation of A to c t at Different Values of r

Table I

V assumed to remain the same, c equals 20, t equals tax
For convenience V equals $24,000

V	r	A	ct	t	Per cent A to V
$24,000	.01	20,000	4,000	200	83.3
"	.0125	19,200	4,800	240	80.0
"	.015	18,461	5,539	277	76.9
"	.01⅔	18,000	6,000	300	75.0
"	.0175	17,777	6,223	311	74.1
"	.02	17,143	6,857	343	71.4
"	.03	15,000	9,000	450	62.5
"	.04	13,333	10,667	533	55.5
"	.05	12,000	12,000	600	50.0
"	.10	8,000	16,000	800	33.3
"	1.00	0	24,000	0	0

Table II

When V increases as set forth in the column headed V

V	r	A	ct	t	Per cent A to V	
$24,000	.01	20,000	4,000	200	83.3	
30,000	.01⅔	22,500	7,500	375	75.0	These
36,000	.02	25,714	10,286	514	71.4	are the
42,000	.03	26,250	15,750	787	62.5	same as
48,000	.04	26,666	21,334	1066	55.5	above.
54,000	.05	27,000	27,000	1350	50.0	

Chairman Long: I think the applause ought to please Dr. Plehn for the plain talk that he has given us on the ways of thousands who are well called princes of expenditure. In Massachusetts,

while we do not have all the things that there are in the other states of the Union, we at least have an exact idea of the amount of money which we spend. We have an improvement district, which is small, and a town and city unit, and county and state unit; we have a uniform system of accounting for the majority of those units; we have a uniform reporting system so that we know exactly how much money is expended for government by the people of Massachusetts in all of the various activities in which they are engaged. We require in that state a budget for state expenditures, and most of the cities and towns have accepted the budget system, although it is not compulsory. We hope soon to have a one hundred per cent budget.

Dr. Gephart said this morning that government should learn to live like individuals. I can not disagree with that. Government does not always know what its income is, and in fact it is proper to say that the majority of governmental units, which appropriate money, rarely know what their income is to be. We think we have overcome that in Massachusetts, and we have as a speaker this afternoon, on that important phase, a man who has devoted the last part of his life to government service in Massachusetts, and who has been for a large part of the time Speaker of the Massachusetts House, a man who has devoted his talents to government for the benefit of Massachusetts.

It gives me pleasure to introduce this important citizen of Massachusetts and my personal friend, Mr. Benjamin Loring Young, Speaker of the Massachusetts House of Representatives.

Mr. Benjamin Loring Young (of Massachusetts): Mr. Chairman, ladies and gentlemen: Like Doctor Plehn, I also was unaware of the time-limit put on the speakers. I can say, therefore, that I am not going to read this entire report through. I hope later it may be printed, because it goes into a very full and detailed statement of the problem, and it may be of help to some of you who are interested in problems of state finance. I do not believe it is going to help a great deal in making this speech, because I have to leave out about half of it. The title given to me to speak upon is, "The Budget System as a Preventive Measure Against Public Extravagance."

THE BUDGET SYSTEM AS A PREVENTIVE MEASURE AGAINST PUBLIC EXTRAVAGANCE

The Financial Record of Massachusetts Before and Since the Adoption of the Budget System in 1918

HON. BENJAMIN LORING YOUNG
Speaker of the Massachusetts House of Representatives

My subject is "The Budget System as a Preventive Measure against Public Extravagance." The various arguments for financial planning and the many advantages which have followed the adoption of the budget system by American cities and states and finally by the Federal Government are well known. Further theoretical discussion is unnecessary. It may, however, be valuable to describe in detail the budget experience of one state. Because of personal knowledge I choose for discussion the Commonwealth of Massachusetts. Massachusetts adopted a state budget system in 1918. This paper will describe the conditions and reasons which brought about its adoption, its principles and method of operation and the results which have been obtained. The conclusions which can be drawn from the experience of Massachusetts will in most cases apply to all units of government.

It seems advisable that I mention my own connection with the Massachusetts budget, not because that fact has any bearing on the subject itself, but in order that my audience may understand the point of view with which I have studied the question and arrived at my conclusions. My opinions are based in part upon general study, but mainly upon nine years' practical experience in the Massachusetts House of Representatives. I am familiar with the budgets of other states and countries, only in so far as they have been explained in occasional articles and publications. My legislative service, however, has extended over the entire period of the Massachusetts budget. I have been, since January 1916, a member of the House of Representatives, serving five years on the Committee on Ways and Means, which, under the rules of the House, has jurisdiction over all financial legislation. During the recess of 1917 I served on the Joint Special Committee on Finance and Budget Procedure, which drafted and presented to the session of 1918 a preliminary budget plan for the year and also the proposed budget law which was enacted at that session. In 1919 I was chairman of the House Committee on Ways and Means, with the duty of reporting the first general appropriation bill based upon an executive budget. In 1920 I was floor leader of the majority party and for the past four years have been Speaker of the House.

During all this period I have been actively concerned with the budget.

Let us first define the word "budget" and also limit this discussion to a few of its more important features and results. I shall adopt the definition of the word used by Dr. Frederick A. Cleveland, namely, "a plan for financing an enterprise or government during a definite period, which is prepared and submitted by a responsible executive to a representative body, whose approval and authorization are necessary before the plan may be executed." [1]

A complete budget system should include the following steps:

The Four Divisions of the Budget

(1) The preparation of the budget by a staff agency under the direction of and directly responsible to the Governor of the state. The feature of executive responsibility for the submission of a complete financial plan is essential. Although many states are still experimenting with so-called budgets prepared by legislative committees or state boards with divided responsibility, the executive plan has, both in theory and practice, the better of the argument and is generally recognized today as the standard form of budget.

(2) The consideration and adoption of the budget by the legislature, under proper rules of procedure and the passage of appropriation and revenue bills needed for its execution. Consideration at this stage should include the right of amendment by the legislature and the right of veto of appropriation items in whole or in part by the governor. The budget should adapt itself to the historic customs and general theories of American government. It should not vest either the executive or the legislative branch with arbitrary and uncontrolled power, but should seek that harmony between the branches of government which is so essential to the successful functioning of a democracy.

(3) The execution of the budget by the administration of the state, including the raising of revenue by the levy of taxes, the issue of bonds or otherwise and the expenditure of money as appropriated by the legislature. The final budget figures should ordinarily be the maximum but not necessarily the minimum of departmental expenditures. Public money should not be spent merely because it is available. An important function of the executive is the control, through an adequate staff agency, of all departmental expenditures, to ensure that appropriations are wisely expended and full value received.

(4) The publication of budget operations and results, based upon

[1] Frederick A. Cleveland, "Evolution of the Budget Idea in the United States," in *The Annals of the American Academy of Political and Social Science*, Vol. 62, p. 15, November 1915.

sound methods of bookkeeping and auditing, so that public officials, the press and the citizens of the state may know the what, why and how of state finance.

These last two steps of budget procedure are strictly administrative problems, and because they do not concern directly the work of the legislature and its relation with the executive, they are not discussed in this paper. We thus find our discussion limited to the preparation of the budget by the executive and its consideration and adoption by the legislature. The discussion is further limited by excluding all reference to the form and detail of departmental estimates and budget documents. The assembling and preparation of budget material is highly technical work. In Massachusetts it is being well done by budget officials and there has been no necessity for forced improvement through legislative action.

General Scope of this Paper

The discussion will be arranged as follows:

I. The financial system of Massachusetts before the adoption of the budget in 1918.
II. The beginnings of reform.
III. The budget system as adopted in 1918 and amended to date.
IV. The results which have followed the adoption of the budget system.
V. Conclusions.

I. The Financial System of Massachusetts before the Adoption of the Budget in 1918

Before 1918 the financial system of Massachusetts had no resemblance to a modern budget system. The governor was elected annually. The administrative work of the state was divided among more than one hundred separate and independent administrative units, with power to expend public funds or legislative appropriations. Four of these administrative units were elective officers; the rest were appointive officers, boards, commissions and departments of almost every known form and character. Almost without exception these units dealt directly with the legislature in financial matters, and prepared and filed their own estimates without any executive supervision. The executive control of the governor was limited to the power of appointment and, in certain cases, of removal. It should be remembered that Massachusetts has an Executive Council, which divides executive authority with the governor and which must confirm and approve almost all executive acts. No general plan including all departmental estimates was prepared. The governor had no part in the preparation or consideration of estimates and no facilities for independent investi-

gation. His action in matters of finance was purely negative, being restricted to the approval or veto of appropriation and revenue bills. He delivered each year in January an inaugural address which usually referred to taxation and state finances. A complete financial program was, however, impossible because he had neither facilities nor authority for investigation and no executive control over the various administrative units. He had no power to veto or reduce separate items, but was forced to accept or reject bills *in toto*. Each year from one hundred to one hundred and fifty bills appropriating money passed the legislature and received executive approval. It is true that estimates filed by the various departments, which might better be called requests for appropriations, were tabulated and published by the state auditor, but they had not been studied or revised by any executive authority, nor had any official comparison been made between the necessary expenditures of the state and the estimated revenue for the year. I should point out here that the State of Massachusetts does not have general revenues, under existing law, sufficient to meet its annual expense.[2] For example, the expenditures recommended in the Governor's budget for 1924 were approximately $43,400,000. The estimated revenues under existing law, including motor vehicle fees, corporation taxes, inheritance taxes, and all other state receipts were approximately $30,400,000, with free cash on hand of $3,000,000. The balance or deficit of $10,000,000 was met by a direct tax levied upon cities and towns of the state, in proportion to valuations fixed by legislative act. This direct levy for state purposes is called the state tax. The amount of this tax is of vital interest to cities and towns, because local tax rates cannot be fixed until the amounts payable to the state are determined. Municipal appropriations were of necessity voted before the amount of the state tax was determined, rendering impossible exact budget-making by cities and towns. In 1916 and 1917, although a member of the Ways and Means Committee, I did not know, nor did the chairman of the committee know, nor did the Governor know, what the state tax would be, until the last week of the session. In other words,

[2] The Massachusetts income tax, although assessed and collected by the commonwealth, does not produce state revenue, except for expenses of collection. The balance is entirely distributed to cities and towns. For example, the receipts of the Massachusetts income tax in 1923 were $14,620,822.66. The expenses of collection, through the Income Tax Division, were $437,476.97. The balance of $14,183,345.69 was wholly distributed to the cities and towns. The Massachusetts income tax was adopted in 1916 (St. 1916, c. 269; now G. L., c. 62) to take the place of the old method of local taxation of intangible personal property, business incomes and annuities, and the receipts collected have been regarded as local, not state revenues. The commonwealth acts merely as a collecting and disbursing agency.

the legislature passed all the appropriation bills which could command the necessary votes, some based upon departmental requests, a few upon recommendation of the Governor and many others upon private petitions and bills filed by members of the Senate and House. At the close of the session the bills were added up, the total was compared with the estimated revenue and the amount of the deficit was fixed as the state tax for the year. Surely this was not a budget system. Its defects may be enumerated as follows:

(1) No executive control over state finances, the Governor being practically a figurehead, with no authority.

(2) No general plan of expenditure and revenue prepared by any responsible authority.

(3) Unbusinesslike legislative machinery, resulting in the passage of a great number of appropriation bills, bearing no relation to one another and no relation to any general program. The Ways and Means Committee, which reported bills from day to day during the entire session from January to June, had neither time, facilities nor experience for this difficult task. A popular and experienced legislator or department head could get what he wanted. Merit and virtue alone could accomplish little. Private appropriation bills slid through without discussion before the actual needs of state departments had even been considered.

One good feature of legislative procedure was a rule which required that all appropriation bills be considered by the Committee on Ways and Means. This rule, in effect to some extent since 1858, has been very valuable. It at least located financial responsibility somewhere. It has been continued under the budget system and now reads in part as follows: "Bills involving an expenditure of public money, or grant of public property, or otherwise affecting the state finances . . . shall, after their first reading, be referred to the Committee on Ways and Means, for report on their relation to the finances of the commonwealth." This rule brings before the Committee on Ways and Means, not merely the executive budget, but all bills of every kind which seek to appropriate or expend money, to increase the duties and functions of government, to amend the tax laws, or which otherwise affect the treasury. Many important legislative measures reported by other committees must therefore be referred to Ways and Means, before consideration by the House. During the session of 1924, two hundred and fifty-nine matters were referred to and reported upon by House Ways and Means and sixty-eight matters by Joint Ways and Means, the legislative rules requiring a report upon every reference. Having discussed the old methods, let us now consider the period of transition and reform.

II. The Beginnings of Reform

Although as already stated, conditions before 1918 were most unsatisfactory, an interesting budget experiment was tried as early as 1910. In that year Hon. Joseph Walker, Speaker of the House, secured the passage of a new law (St. 1910, c. 220) which for the first time brought financial estimates under the jurisdiction of the Governor. Estimates, tabulated by the auditor, were to be submitted to the Governor during the first week in January and by him transmitted to the legislature "with such recommendations, if any, as he may deem proper" both as to expenditure and revenue. Although executive responsibility was not clearly defined and adequate power and facilities were lacking, this act did give the Governor an opportunity to initiate a budget, the first attempt to establish an executive budget in any American state. (See Gulick, *Evolution of the Budget in Massachusetts,* p. 43.) But this experiment, of such real promise, failed because of personal disputes and party politics. During the next session — 1911 — the Governor and the legislature were politically hostile and personally unfriendly. The attorney general, in an opinion dated January 21, 1911 (III, Op. A. G., 346) construed the act of 1910 so narrowly as practically to defeat its purpose. The legislature finally passed a new act (St. 1911, c. 82) authorizing the Governor to make necessary investigations. The Governor used this new law to attack the state departments and employed certified public accountants, whose investigations were pursued at times with more zeal than discretion. The legislature claimed that the Governor was encroaching upon its own functions. The Senate even adopted an order requesting the Justices of the Supreme Judicial Court to decide whether or not the act of 1910 gave "to the executive a power which infringes on the power of the General Court, contrary to Article 30 of the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts." The Justices decided in favor of the validity of the act (*Opinion of the Justices,* 208 Mass. 610). The Governor demanded the creation of "a permanent state finance commission." This unfortunate and bitter dispute resulted in a strange compromise in 1912. The acts of 1910 and 1911 were repealed and the authority of the Governor to employ expert investigators and to initiate a budget was abolished without ever having had a fair and honest trial. But the legislature builded better than it knew. To secure the repeal of the unpopular statutes of 1910 and 1911 it accepted the Governor's idea of a state finance commission and established by St. 1912, c. 719, the Commission on Economy and Efficiency, with wide powers of investigation, with the right of reporting to the Governor or to the legislature and charged with a special duty to consider the advisability of substituting for existing methods "the budget method of appropriating money."

The Walker act of 1910 attempted the impossible—an executive budget, without an adequate staff agency or permanent budget-making authority. The act of 1912 did just the opposite; it created the staff agency but abandoned the budget. Political misunderstandings delayed further progress for a time but the final step—a combination of both acts—was bound to come and, as we now shall see, to succeed.

The Commission on Economy and Efficiency, under its standing authority to submit reports, filed two reports with the legislative session of 1916; one a "Report on the Administration of State Revenues and Loans" (House Document 2225 of 1916), the other a "Report on Budget Procedure" (House Document 2288 of 1916). These were filed too late in the session for any action. The public mind, however, was beginning to give attention to budget problems. The burden of taxation and the growth of state debt attracted public attention. The Boston Chamber of Commerce appointed a special committee on State Budget System, which filed a report in November 1916, recommending immediate action. This committee consisted of Hon. Robert Luce, now a member of Congress and the author of well-known treatises on legislative procedure and legislative assemblies, Professor Charles J. Bullock of Harvard, a recognized expert on taxation, and Roland W. Boyden, Esq., a member of the Massachusetts bar, now known throughout the country for his work as American representative on the Reparations Commission, during the administrations of President Wilson and President Harding.

The session of 1917 produced some results. State departments were required to file estimates, not merely with the state auditor for printing as heretofore, but also (St. 1917, c. 278) with the Supervisor of Administration (successor to Commission on Economy and Efficiency; St. 1916, c. 296). Revenues and funds heretofore collected and expended by various state departments, without specific appropriation, were brought into the general treasury and made subject to legislative control through annual appropriation (St. 1917, c. 277). Before this act the State Highway Commission had authority to expend all sums collected from motor vehicle fines and fees, without appropriation, regardless of the amount. This unsound practice also applied to all receipts of prison industries and to various harbor improvement funds, more than twenty special funds in all being affected by the act. The real question of the budget, however, was postponed until the next session, to await the results of a special investigation.

SPECIAL INVESTIGATION OF BUDGET IN 1917

A Joint Special Committee on Finance and Budget Procedure was established, consisting of three senators and six representa-

tives. This committee reported in January 1918 a preliminary budget plan for the year (House Document 17 of 1918). This was a legislative, not an executive budget, but was valuable as the first example of budget-making in Massachusetts. The general report of the committee was also filed in January 1918, being printed as House Document 1185. The committee had been greatly aided in its study by Mr. Luther Gulick, who acted as secretary and who wrote a large part of the report. Mr. Gulick thus rendered the cause of budget reform a great service and at the same time gained the practical experience and knowledge which enabled him in 1920 to publish his excellent study of Massachusetts state finances, entitled "The Evolution of the Massachusetts Budget." The importance of Mr. Gulick's contribution cannot be overstated and as a member of the committee I am glad of this opportunity to express my own deep appreciation.

The joint special committee, in its general report, recommended the immediate adoption of an executive budget and suggested that the administrative work of the state should be grouped among a small number of executive departments. This recommendation for a reorganization of state government is referred to, because it was the forerunner of a constitutional amendment ratified by the people in 1918, requiring a consolidation into not more than twenty executive departments, followed in 1919 by a complete reorganization of the state government during the administration of Governor Coolidge. (St. 1919, c. 350.)

III. The Budget System as Adopted in 1918 and Amended to Date

Pursuant to the recommendations of the joint special committee the budget system was established during the session of 1918 (St. 1918, c. 244, now G. L., c. 29, secs. 3-6 inclusive; for text see Appendix A). The present procedure is as follows. Each department head is required to submit on or before October 15 to the Budget Commissioner of the Commission on Administration and Finance (successor to Supervisor of Administration, St. 1922, c. 545) estimates of all recommended expenditures and of all revenues and receipts. The Budget Commissioner has authority to procure all necessary information and to make independent investigations, wherever needed. The budget is drafted under the direction of the Governor and contains, item by item, the expenditures of the two preceding years, the amount of appropriation of the previous year, the amount requested by the department and the amount recommended by the Governor for the current year. The budget document also contains complete information as to the outstanding indebtedness of the commonwealth and a balance sheet showing the appropriations recommended by the Governor, the free cash

on hand, the estimated receipts under existing law and the amount of the state tax on the cities and towns necessary to finance the program recommended. The budget does not set forth all the financial transactions of the state. Investments and expenditures of certain trust funds are not included. To obtain complete information one should consult not merely the budget, but also the annual report of the comptroller of the state. The budget must be filed by the Governor with the General Court (the constitutional name for the legislature) within three weeks from the beginning of the annual session in January. The fiscal year of the state begins December 1, but it is provided by statute that "Officers or departments having charge or supervision of expenditures in behalf of the commonwealth may continue expenditures in each year, at the rate authorized by appropriations for the preceding fiscal year, until the general court makes an appropriation therefor or provides otherwise" (G. L., c. 29, sec. 10).

The period from the November election until the third week in January has apparently been regarded by the executive as ample for the preparation of the budget. Whether this will always be true cannot be foretold. It would seem, however, that with an adequate staff agency constantly at work and with estimates filed October 15 and available for the Governor immediately after election, two months should be a sufficient period for the consideration and filing of the budget. When the budget system was adopted Massachusetts held an annual state election. Beginning with the election in 1920, Massachusetts has elected its Governor for a two-year term, but the constitutional requirement for an annual session of the legislature is still in force.

CONSTITUTION AND STATUTE

The budget rests not merely upon the statute of 1918 but also upon an amendment to the constitution proposed by the constitutional convention in the summer of 1918 and ratified by the people at the November election (Article LXIII; for complete text see Appendix B). The constitutional amendment provides that "the governor shall recommend to the general court a budget which shall contain a statement of all proposed expenditures of the commonwealth for the fiscal year, including those already authorized by law, and of all taxes, revenues, loans and other means by which such expenditures shall be defrayed. This shall be arranged in such form as the general court may by law prescribe, or, in default thereof, as the governor shall determine."

The statute very properly covers the subject in greater detail. It provides that "the budget shall be classified and designated so as to show separately estimates and recommendations for

(*a*) expenses of administration, operation and maintenance;
(*b*) deficiencies or overdrafts in appropriations of former years;
(*c*) new construction, additions, improvements and other capital outlay;
(*d*) interest on the public debt and sinking fund and serial bond requirements;
(*e*) all requests and proposals, for expenditures for new projects and other undertakings;

and shall include in detail definite recommendations of the governor relative to the amounts which should be appropriated therefor. The budget shall also include definite recommendations of the governor for financing the expenditures recommended, and the relative amounts to be raised from ordinary revenue, direct taxes or loans."

It must be obvious from these quotations from constitution and statute that the Massachusetts budget imposes upon the governor a direct and personal responsibility which cannot be dodged, cannot be vicariously performed, but which must be accepted and discharged like the other important duties of the chief magistrate.

Although following in general the budget statute of 1918, the constitutional amendment introduced two important additional features. The governor was empowered to disapprove or reduce items or parts of items in appropriation bills. This change required a constitutional amendment. No governor has yet exercised the power so granted, but with all appropriations embodied in one or two bills it is obviously essential. The second feature added by the amendment deals with amendments to the budget and with special appropriation bills. The phraseology is as follows: "All appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill. The general court may increase, decrease, add or omit items in the budget * * * but before final action on the general appropriation bill it shall not enact any other appropriation bill except on recommendation of the governor. * * * After final action on the general appropriation bill or on recommendation of the Governor, special appropriation bills may be enacted. Such bills shall provide the specific means for defraying the appropriations therein contained." The effect of this change will be explained in connection with a later discussion of legislative power and the budget. Let it here be noted, however, that although the purpose of this amendment might have been achieved by statute or rule, it would have been ineffective as a permanent and obligatory reform without constitutional action.

LEGISLATIVE CONSIDERATION OF THE BUDGET

The budget, being in the nature of a money bill, is filed in the House of Representatives and is referred to the House Committee on Ways and Means. Since 1920 the House and Senate committees have sat jointly on the budget. The joint committee system, an interesting feature of the Massachusetts legislature, saves time and promotes convenience for public officers and the general public. By bringing senators and representatives together, it promotes harmony of opinion and renders conflict between the branches less frequent. The committees on Ways and Means sit jointly less than do other committees, but joint action on the budget has now become well established. All persons are permitted to appear before the committee in public hearing. State department heads have a chance to defend their original proposals, even if they have not received executive approval. Every appropriation item is given thorough consideration and is approved or amended by separate vote of the committee. When finally agreed upon, the general appropriation bill is reported in the House and is subject to debate and amendment like any other bill. The budget of 1924 was filed with the House of Representatives and referred to the Committee on Ways and Means on January 17. The joint committee of Senate and House members was occupied with hearings and sessions on the budget from January 23 to February 13. The general appropriation bill was reported in the House on February 20. On February 25, Representative Henry L. Shattuck, House Chairman, delivered the annual budget speech, his remarks being printed as House Document 1321. The bill was debated on February 26, 27 and 28. Save for a few corrections it was passed to be engrossed practically as drawn. It was sent to the Senate on February 28 and passed to be engrossed March 4, with a few unimportant amendments. No Committee on Conference was required, the differences being adjusted and the necessary votes of agreement adopted in the Senate and House, on recommendation of the Committee on Ways and Means. The bill went to the Governor March 18 and became law by his signature on March 21 (St. 1924, c. 126).

Four essential features of the Massachusetts budget have now been described:

(1) Preparation of the budget by the Budget Commissioner, the Budget Bureau being a staff agency with adequate personnel, facilities and authority directly responsible to the Governor.

(2) Submission of the budget by the Governor to the legislature within three weeks from the beginning of the session. By custom the budget is submitted with a written message. In my opinion it would be better if the governor appeared in person before a joint convention of the two houses. The annual budget is certainly equal in importance and dignity to the annual address which in Massachusetts is always delivered in person.

(3) Consideration of the budget by the joint committee on Ways and Means. The possibility of a reference to the Committee of the Whole House is not discussed in this paper, that form of procedure not being in customary use by the Massachusetts legislature.

(4) The budget speech of the Chairman of the House Committee on Ways and Means, followed by debate, amendment and passage of the general appropriation bill. The importance of the budget speech should be emphasized. It should contain a table showing all changes from the appropriation figures recommended by the Governor, with reasons therefor. The speech should always be printed, especially in a state which, like Massachusetts, does not require formal records of action taken by legislative committees. The present Chairman of Ways and Means, Representative Henry L. Shattuck of Boston, has made notable contributions to budget progress in his budget speeches delivered during the last two sessions. These addresses, printed as House Documents 1191 of 1923, and 1321 of 1924, are models for his successors to follow.

Before we take up in detail the important results accomplished by the budget, certain other legal and practical questions should be considered.

LEGISLATIVE POWER AND THE BUDGET

(1) As already stated, the legislature has express power to "increase, decrease, add or omit items in the budget." This is in accordance with usual American practice. It rejects the example of the British budget, and in my opinion correctly. American legislative government is very different from the parliamentary government of England and the attempts to follow British precedents and make the executive supreme are not likely to produce satisfactory results in this country. The British cabinet is in reality the controlling element of the majority party in the Parliament. It has no fixed tenure of office and must, to remain in power, report a financial program which commands the support of that majority. It bears only a slight resemblance to the American governor or president, elected by the people and wholly independent of the legislature. The prime minister is the agent of Parliament, not of the Crown. The British executive is at all times subject to legislative control, the American executive is not. We can learn much from British experience, but the American principle of the separation of powers is too deeply entrenched in our constitutional system to be lightly cast aside. In Massachusetts the guiding influence for budget reform has come from the legislature. We must assume that the legislature will be governed by reasonable common sense. Uncontrolled power to cripple a state department, by refusing to allow appropriations, under a system which leaves the legislature helpless to repair such an injury is not worth the

cost. The right of the Governor to veto or reduce appropriation items balances and offsets the right of the legislature to increase or add items. Furthermore it should be noted that the power of the legislature to increase or add items is not absolute. By the constitution itself this power is distinctly limited. The items which the legislature may increase or add are "items in the budget." These words "items in the budget" have not been construed by the courts, but in my opinion they limit the right of amendment to matters within the scope of the budget message. The "items in the budget" must mean the requests of the state departments embodied in the budget documents and they do not include outside or special matters in the way of new expenditures which might otherwise be proposed by amendment. This construction was announced by me in a budget speech in 1919 (House Document 1370) and reiterated by Chairman Shattuck in his budget speech of 1924 (House Document 1321).

The constitutional provisions forbidding the passage of special appropriation bills, until after final enactment of the general bill based on the budget, and requiring that special appropriation bills thereafter passed must "provide the specific means for defraying the appropriations therein contained" have already been mentioned. These provisions have sometimes been referred to as limitations of the legislative power. In my opinion they should not be regarded as limitations of the power of the legislature but rather as sound and reasonable conditions imposed upon the exercise of that power. The reasons for my opinion, reduced to simple terms, are as follows:

First. The general appropriation bill has the right of way. The needs of the state government, as organized under existing law, must be provided for, before any new or additional commitments are made. It is surely correct to take care of essentials first. With the passage of the general appropriation bill the tax burden is approximately fixed. In theory, and usually in practice, the available revenues of the state have been charged off and balanced against the appropriations already voted. No surplus exists in the treasury. At the most there is merely a reasonable reserve set up in the original budget by the Governor to meet the emergencies and contingencies of the session. In other words, there is no free cash or revenue available for special appropriation purposes.

Second. Special appropriation bills passed by the legislature on its own initiative must provide the additional revenue necessary to finance the new proposals. In other words, the legislature must not appropriate against a deficit. Its power to appropriate money is not curtailed, but it must be exercised in accordance with principles dictated by business prudence and common sense. The general fund of the state treasury must no longer be regarded as an in-

exhaustible source of wealth. What the legislature takes out in special appropriation bills it must replace by additional revenues or taxes. No money—no appropriation; stripped of legal terminology, that is the rule laid down for the legislature to follow. Surely not even the most zealous advocate of legislative supremacy should object to the application of such simple and businesslike principles to public finance; principles which even in default of constitutional requirements should have been adopted by the legislature itself, by statute or rule, as a reasonable safeguard against extravagant appropriations.

SUPPLEMENTARY BUDGETS

(2) The Governor may at any time recommend supplementary budgets which by the constitution are subject to the same procedure as the original budget. In practice this usually means merely one supplementary budget message at the close of the session. It has not been used to defeat the principle of the budget. During the average legislative session new laws will be passed requiring appropriations; some salaries fixed by law will be increased and various emergencies will have to be met. The supplementary budget estimates will not ordinarily require additional revenue, but will be within the original revenue program. For example, the Governor's budget of 1924 recommended state appropriations of $41,853,069.76 and in addition set aside a reserve for emergencies of $1,298,017.33. The amount of this reserve has been criticized, but our experience in Massachusetts has proved that an appropriating power of approximately $1,000,000 will be needed at the end of the session for supplementary expenses.

ANNUAL AND PERMANENT APPROPRIATIONS

(3) Massachusetts has no system of continuing appropriations. Appropriations are passed annually for all purposes and if any fail of passage state work dependent upon them would apparently be suspended. Many students of public finance have argued that essential public work authorized by law should not be subject to suspension by the governor or one branch of the legislature, through refusal to approve an annual appropriation. Attempts to do this have been made in Massachusetts but have never succeeded. A sense of fair play and a respect for precedent have prevented such radical action. Our statutes do contain certain language which looks in the direction of continuing authority to expend without direct appropriations, but the distinct tendency is to clarify doubtful sections and bring all appropriations under annual legislative control. For example, the Commissioner of Correction, until recently, was authorized by statute (G. L., c. 127, sec. 160) to "expend not more than eleven thousand dollars annually for the

assistance of prisoners." This was amended in 1924 (St. 1924, c. 299) by striking out the words "not more than eleven thousand dollars annually" and inserting in place thereof the words, "such sum as may be annually appropriated." In my opinion this tendency is correct. Continuing appropriations may have some merit, under certain conditions, but as a general rule I believe that each session of the legislature should have authority to determine the financial policy of the state.

I have already referred to the standing provision of law which authorizes departments to "continue expenditures in each year at the rate authorized by appropriations for the preceding fiscal year, until the general court makes an appropriation therefor or provides otherwise" (G. L., c. 29, sec. 10). This statute has not received judicial consideration, but legislative opinion is that it confers no right upon state officers to expend money after adjournment of the legislature, except as provided by the annual appropriation act. Such a provision of law should be respected and complied with by the legislature, as a guide to the Committee on Ways and Means and a rule of conduct for the legislature itself, binding on all persons, until changed by amendment, but probably beyond the power of legal enforcement.

EXECUTIVE CONTROL AND THE BUDGET

(4) The government of the state was reorganized in 1919 into twenty executive departments, a step which was in harmony with budget principles and gave greater executive control. A further step in the same direction was taken in 1922, with the creation of the Commission on Administration and Finance, organized with a Budget Bureau, a Comptroller's Bureau and a Purchasing Bureau. This commission exercises under the Governor as complete executive control over the entire administration as could be desired. It runs the budget, it controls all state purchasing, with a few exceptions, and it does the bookkeeping of the state, leaving to the treasurer merely the duties of collecting and disbursing officer and to the state auditor merely the duties which the name of his office implies. The general financial policies are determined by the Governor and legislature, through the budget and the appropriation bills based thereon. The execution of these policies is in the hands of the Commission on Administration and Finance. With the exception of the salaries of certain higher officials and legislative employees, practically all salaries are left as a detail of administration. All rates and increases must be approved by the Commission on Administration and Finance, subject to an appeal to the Governor and Council. American legislative bodies too frequently consider that wages and similar details of employment in the public service are proper matters for direct legislative action. This idea

is wrong. These matters do not concern the legislative function of making laws and determining general policies of government, but are solely details of administration. Besides being objectionable on grounds of legal theory, salary schedules fixed by law are likely to prove unsatisfactory for practical reasons. Such schedules are too rigid and inelastic. They cannot be changed, except during a legislative session, and then only by the passage of a new law—a slow and cumbersome method at best. The difficulty of increasing salaries by law in a period of rising costs has frequently caused great hardship to public employes receiving small salaries. On the other hand, certain salaries may, through political favoritism, be fixed too high. Once established by law, it will be found almost impossible to have them reduced—a result unfair to the taxpayer and causing dissatisfaction and discontent among less favored employees. Salary schedules should never be rigid and unchangeable. They should be elastic, subject to rise and fall with living costs and bearing some relation to the prevailing rate of wage in private employment. They should therefore be subject to change by department heads, with executive approval and within available appropriations.

The Massachusetts legislature, by the creation of the Commission on Administration and Finance, has recognized that this feature of government work should be left under executive control. But if this executive authority were abused or improperly carried out, it might then become necessary for the legislature, through general law, to extend its supervision to such matters.

IMPROVEMENT IN THE BUDGET SYSTEM SINCE 1918

(5) The budget has each year, since 1918, been improved and strengthened. This has come about in various ways:

(a) *By amendment of the statutes.*[3] State departments have been forbidden to file any financial requests with the legislature, except through regular budget channels. They have been required to file estimates of revenue and recommendations for new sources of revenue, as a part of regular budget estimates. The Commission on Administration and Finance, with general supervision over departments, as already described, has been created. A method has been adopted for the settlement and payment of small claims, taking the place of a large number of private claim bills formerly filed with the legislature.

(b) *By rulings of the Speaker of the House on questions of order* which required a construction and application of the constitution and statute relating to the budget. (See Journal of the House, March 8, 1921; January 31, 1922; April 7, 1922.) The last ruling

[3] See St. 1919, c. 52 and 131; G. L., c. 29 and 30; St. 1921, c. 42; St. 1922, c. 24 and 545; St. 1923, c. 300 and 362; St. 1924, c. 395.

noted, construed and applied that provision of the constitution which requires that special appropriation bills "shall provide the specific means for defraying the appropriations therein contained." Because of the fact that this provision is a vital feature of the budget system the effect of which has not yet received judicial interpretation this parliamentary ruling, which has at least the authority of a precedent to guide future presiding officers, is set forth in full in the appendix (Appendix C).

(c) *By a gradual improvement in the arrangement of the budget documents,* both as to form and contents. Each year the budget recommendations have been more complete and the executive responsibility of the governor more clearly emphasized.[1]

(d) *By improved legislative rules and procedure.* One change should receive special emphasis. When proposals for new legislation, involving social, engineering, or financial problems of exceptional magnitude or difficulty are under consideration, the legislature usually refers them, for investigation and report, to some appropriate state department or to a special commission established for the purpose. Reports so made have been filed with the following session of the legislature. This practice has proved a bad loophole in the budget. Proposals for large expenditures by official recommendation were laid before the legislature, without previous examination or recommendation by the Governor. A proposal might well be regarded as wise or expedient by a department or special commission, which would not be so regarded by the Governor, who is under a general responsibility for the entire financial program of the year. In 1923 the legislature adopted a policy of requiring that all such reports be filed, not merely with the Clerk of the House of Representatives, as previously, but with the Budget Commission, as a part of the annual budget estimates. It is obvious that this policy cannot always be followed. The period of time between an adjournment of the legislature in May or June and the filing of the budget estimates on October 15 will frequently be too short to permit exhaustive investigation. The new policy, however, is a step in the right direction and has already produced good results.

JUDICIAL AND LEGISLATIVE ESTIMATES

(6) No question has been raised with regard to the application of the budget to judicial and legislative estimates. The appropriation figures for the judiciary are compiled by the comptroller, in accordance with existing statutes. Legislative estimates are prepared by the presiding officers and clerks of the two branches. The Governor is presumed to exercise the same budget authority over these estimates as over any others. Recommendations for reductions in the amounts suggested for legislative appropriations

have almost invariably received legislative approval. Mutual respect between the several branches of government has in Massachusetts taken the place of constitutional argument. No question of constitutional authority has been raised. The justices of the courts and the members of the legislature have given complete support to the present budget system.

With this background in mind, let us now find out the actual results which have been obtained during six years of budget administration.

IV. The Results which have Followed the Adoption of the Budget System

(1) executive responsibility

The budget has made the Governor a real chief executive, with responsibility for results and power to get them. This point needs no argument. It is already apparent. In the Commission on Administration and Finance, the Governor has an adequate staff agency with time, experience and facilities for financial study and planning. In filing the budget with the General Court, the Governor does not merely transmit some one else's budget, but he submits his own personal recommendations. The responsibility is his. It cannot be dodged. It must be performed. And responsibility breeds conservatism. Without a budget to make him count the cost, a chief executive easily falls into the habit of recommending expenditures, without mentioning revenues or taxes. We are all familiar with gubernatorial addresses which appealed for the passage of every kind of social legislation—non-contributory old-age pensions, health and unemployment insurance, maternity benefits—the whole program of so-called social reform. No suggestion would be made as to probable cost and no plan outlined for raising the money. The address would then close with an appeal for strict economy and an urgent demand that the legislature decrease the taxes and the indebtedness of the state. To use a slang phrase, the Governor could thus "pass the buck" to the legislature. If the humanitarian measures failed of passage the legislature could be held up to ridicule as reactionary. If but a small part of the program became law and taxes went up accordingly, again the legislature could be blamed for its disregard of the principles of economy. Today the Governor must count the cost. Every proposal in his annual address, which is a new undertaking or an enlargement of present work, must be included in the budget, measured in dollars and cents, and new or increased taxes recommended to meet the cost. This requirement being comparatively new and not yet fully understood by all officials has not always been strictly complied with. Recommendations may be couched in vague terms, which suggest future benefits but do not entail present budget

costs. The loophole of the next fiscal year offers an avenue of escape for a Governor who thinks it is good politics to imitate "Mr. Facing Both Ways". But such conduct will be the exception, not the rule. Attempts to dodge responsibility will be always obvious, sometimes ridiculous, and in the end bad politics. The budget principle is in full view; legislative and public opinion can and will insist that it be obeyed. This great influence for conservatism in public expenditure and in social legislation produced by the budget is often overlooked and cannot be too strongly emphasized. The anticipated benefit must be weighed in the balance against the burden of taxation.

(2) IMPROVED LEGISLATIVE PROCEDURE

In pre-budget days appropriation bills were hurried along, often with as little study as the estimates upon which they were based. For example, in 1915 one hundred and thirty-six appropriation bills became law. In 1923 only three bills appropriating money became law. The first was the general appropriation bill, based on the Governor's budget, the second a supplementary bill, based on a supplementary message filed by the Governor toward the end of the session. The third was of an emergency nature, being a special act for the settlement of litigation with certain national banks. This act carried a special appropriation of $3,000,000 and levied special taxes to meet the cost. In 1924 only two appropriation bills became law. Here is a saving in time and expense.

With this improvement in procedure has come a marked reduction in special financial legislation, often known as the "pork barrel". Too often a community has measured the value of its senator or representative by the amount of money he could divert from the general treasury to his particular district. General state needs, the development of institutions, the protection of property, were often subordinated to the selfish claims of local districts. The new sidewalk, the state highway, the post office, can be seen and understood by the voter, who may never have heard of the great problems of government which confront the legislature. The evil of special legislation will always be present, but the budget has reduced it. I have already pointed out that under the Massachusetts law, no special appropriation bills can be passed until final action on the general appropriation bill, based on the budget. Everyone then knows what the burden of taxation will be. The estimated revenue of the state, including the new state tax, has been balanced by the governor's program. In theory at least the treasury can stand no further drafts. That provision of the Massachusetts budget which imposes reasonable conditions upon the legislature, with regard to special bills, has already been described and emphasized as one of its most vital features. Before the budget

system, the legislature passed each year a considerable number of special bills appropriating state funds for local highways and for river and harbor improvements. Several years have now gone by without the passage of a single objectionable local bill. In the first place, the governor's budget uses up the money. In the second place, the Ways and Means Committee must hold back all special bills, until after the general appropriation bill has become law and the burden of taxation been determined. In the third place, the leaders of the legislature and the governor himself have refused to support any special bills which did not provide for proper local, municipal and county contributions to the work. Lastly, the legislature has begun to see that the allocation of funds appropriated for highway purposes is an administrative, rather than a legislative function. The sum of one million dollars given to an expert commission on state highways, with full discretion to fix the routes where needed for public travel will usually produce far better results than an equal sum divided up among the districts of a few influential senators and representatives. The budget system lets in the light. Evil and unbusinesslike practices shrivel away and sound business methods take their place. The prevention of log-rolling pork-barrel methods is favored by the legislators themselves as much as by the general public. Under the old system every man had to grab what he could for his district. Under the new system the wise politician frankly tells his constituents that the old days are over and he is willing to stand or fall upon the financial record of the state as a whole.

(3) THE RESULTS IN DOLLARS AND CENTS

The budget has been in operation since 1918, a period of six years, including the present fiscal year, which ends November 30. What are the results in dollars and cents as disclosed by the state tax, the expenses of the state and the outstanding debt? The following table gives the figures from 1912 to 1924, inclusive, a period of thirteen years. The general result is shown on the accompanying chart.

State Tax

Let us first take the direct state tax on the cities and towns. It increased from $6,250,000 in 1912 to $11,000,000 in 1917, an increase, during five years without a budget, of $4,750,000. Even with the budget it increased to $14,000,000 in 1920 and 1921, but was then reduced to $12,000,000 in 1922 and 1923, and in 1924 to $10,000,000. The state tax for 1924 is lower than when the budget was adopted six years ago.

It is true, of course, that revenues from other sources of taxation, such as motor-vehicle fees and inheritances have increased substantially during this period.

	Gross Direct Debt	Net Direct Debt	Gross Contingent Debt	Net Contingent Debt	Expenses	State Tax
1912	$43,112,583.33	$20,790,009.81	$74,368,078.67	$58,440,242.16	$20,450,000.00	$6,250,000.00
1913	42,619,749.99	24,280,454.17	75,001,662.01	57,402,261.33	23,700,000.00	8,000,000.00
1914	47,583,854.16	28,259,906.13	75,380,807.84	56,441,695.98	26,000,000.00	8,750,000.00
1915	49,682,458.32	30,404,384.96	76,110,953.68	55,638,307.05	26,845,000.00	9,750,000.00
1916	49,972,118.73	30,577,256.76	76,958,543.27	55,089,425.35	27,694,712.50	8,000,000.00
1917	53,579,341.65	33,658,551.32	77,572,570.35	54,325,541.77	33,292,860.97	11,000,000.00
1918	51,628,314.56	32,058,102.31	77,742,847.44	53,001,803.52	36,224,249.28	11,000,000.00
1919	60,914,265.88	40,433,204.61	77,723,124.50	51,125,641.70	37,337,510.58*	11,000,000.00
1920	57,547,593.75	35,128,239.62	85,603,068.25	57,107,953.04	40,409,302.40†	14,000,000.00
1921	52,443,622.54	29,311,796.03	85,605,511.99	54,955,118.90	41,669,278.65	14,000,000.00
1922	47,478,706.26	23,712,611.74	85,937,455.74	53,283,385.50	44,114,727.08‡	12,000,000.00
1923	40,046,512.52	20,792,233.44	86,350,399.48	51,730,938.62	45,440,227.67‡	12,000,00.000
1924§	38,000,000.00	18,700,000.00	87,100,000.00	50,480,000.00	.....	10,000,000.00

* Does not include extraordinary expenses in 1919 for—Soldiers' bonus $14,826,575.00
Boston riot duty 1,605,540.67

$16,432,115.67

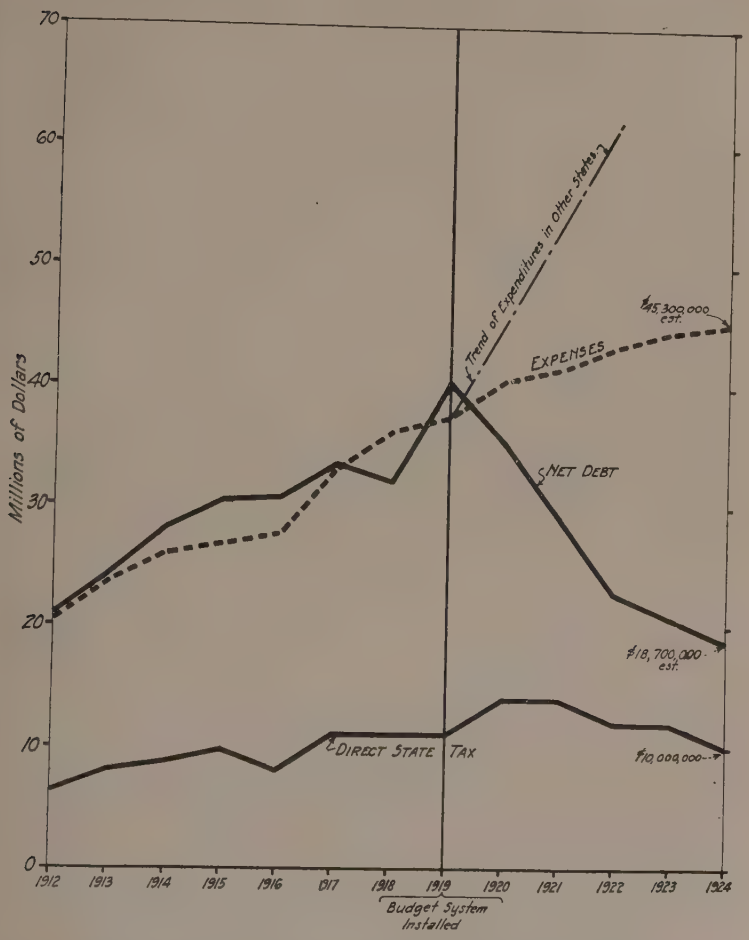
† Does not include extraordinary expenses in 1920 for—Soldiers' bonus $3,151,467.05
Boston riot duty 1,009,597.63

$4,161,064.68

‡ Includes income of school fund and federal grants not previously shown as state expenses.

§ Estimated.

MASSACHUSETTS FINANCE BEFORE AND AFTER THE BUDGET



NOTE.—Since the inauguration of the budget system the net direct debt and the direct state tax have been reduced. While expenditures have increased, the rate of increase is far below the general trend for other states.

Expenses of the State

The expenses of the state in 1912 were $20,450,000. In 1917 the expenses were $33,292,000, an increase of nearly $13,000,000 in five years. The expenses in 1923 were $45,440,000, an increase during six years of the budget, of $12,000,000. This period, however, shows

an increase in the cost of living, surely of forty per cent, for 15,000 state employees and 30,000 inmates of institutions and state wards, whose clothing, food and shelter make up the largest elements of annual state expense. These figures may not at first glance appear to justify my praise of the budget. Let me, however, call your attention to the document published by the Bureau of the Census, entitled "Financial Statistics of States for 1922." It appears that from 1915 to 1922 the general departmental expenses of the forty-eight states increased from $379,000,000 to $918,000,000, or 142 per cent. The Massachusetts increase from 1917 to 1923 has been only 36 per cent. One thing should be mentioned, although perhaps it is a matter of opinion. The State of Massachusetts is doing today more work and better work for the people of the state than ever before. There has been no false economy; no penny-wise and pound-foolish policy. Our institutions for the defective, delinquent and dependent classes have been enlarged and improved. The social work of the state is being sustained and strengthened. We are spending for highways more than ever before. This statement is made to show that the economies which have been effected have been through the introduction of sound business methods and not to the detriment of the people of the state.

State Debt

I have kept the debt figures for the last because they represent the most interesting and important accomplishment of the Massachusetts budget. A budget cannot itself reduce debt, but it creates an atmosphere where financial abuses cannot flourish. It emphasizes the importance of paying each year for what the people receive. It discourages attempts to shift present burdens to the shoulders of the next generation. The figures of Massachusetts debt published in government reports are misleading. Massachusetts has two distinct classes of debt, (1) the direct state debt, incurred for general state purposes, such as prisons and hospitals, armories, abolition of grade crossings, harbor development and expenses on account of wars and the Boston police strike, and (2) the so-called contingent debt, issued in the name of the commonwealth for sewer, water, park and transportation improvements in the metropolitan district of Boston—an area within a radius of ten miles of the State House and including thirty-nine cities and towns. Interest, sinking fund and serial bond charges are annually assessed on these metropolitan cities and towns upon which falls the entire obligation of this contingent state debt. In other states, such bonds would be classified as municipal, county or district bonds, and the usual practice of statisticians of including this contingent debt with the actual direct state debt of Massachusetts without any descriptive analysis is misleading. In fact, the commonwealth merely lends its

credit; the burden of payment falls solely on the metropolitan district. Since 1912 all state bonds have been issued on the serial plan, but earlier issues were sinking fund bonds, and the large sinking funds held by the treasury require a further division of the direct and contingent debt into net and gross debt. The net direct debt—the actual debt of the commonwealth—in 1912 was $20,790,000. In 1917 it was $33,658,000, an increase in five years of nearly $13,000,000. It appears from the report of the Bureau of the Census entitled "Financial Statistics of States for 1917" that Massachusetts, counting both the direct and contingent debt, had a per capita net debt of $23.06, the highest in the country and an outstanding net debt greater than that of any state except New York. The average per capita debt for all states was only $5.50, while such great and prosperous states as Illinois, Ohio and Pennsylvania had practically no outstanding debt at all. This alarming debt situation was an important factor in bringing about budget reform.

With the budget we went strictly on a pay-as-you-go policy, for annually recurrent expenses. State highways had been financed by long-term bonds, running fifteen years and more; new buildings and institutions with thirty-year bonds. We had tried to save the present taxpayer by burdening the future and had in reality injured both. The results of the budget appear in the table. We have paid off serial bonds, accumulations of early sinking funds have increased, and in 1923, after six years of the budget system, the net direct debt of Massachusetts stood at $20,792,000, a decrease from 1917 of nearly $13,000,000 and a figure almost identical with that of 1912. The estimated figure for 1924 is $18,700,000 — the lowest since 1908. Consider also that during this period, Massachusetts paid her soldiers for actual war service $3,730,000 in addition to federal pay;[4] provided in 1919 a state soldiers' bonus of $100 to each veteran, which has cost to date more than $20,000,000; met the increased cost of living, and enlarged all necessary public activities. Where in the financial records of any other state or country during this critical post-war period can such an achievement of debt reducton be duplicated? If we had continued the debt policy of pre-budget days our net direct debt would now be about $50,000,000 instead of $20,000,000, and the annual burden of interest and debt requirements would be more than double. It is significant that our annual interest, sinking fund, and serial pay-

[4] St. 1917, c. 211 allowed ten dollars a month to all Massachusetts soldiers and sailors, in addition to federal pay from the beginning of war service to January 15, 1918. Payments to November 30, 1923 were $3,730,712.42, expenses were $49,365.85—a total of $3,780,078.27. This was financed as follows: bond issue, $1,500,000; general revenue, $2,044,240; transfer from soldiers' bonus fund of 1919, $246,040—total, $3,790,240; leaving an unexpended balance of $10,161.73.

ment charges have, by reason of the pay-as-you-go policy, decreased from $3,854,000 in 1918 to $2,891,000 in 1924, a decrease of $962,000, or nearly a million dollars since the establishment of the budget. Massachusetts has many problems of government still unsolved, but so far as indebtedness is concerned she has put her house in order and is ready for the future. Furthermore, under the provisions of a recent constitutional amendment, all loans, except those issued for the defense of the commonwealth in time of war or insurrection or in anticipation of current revenue, must be authorized by a recorded vote of two-thirds of the members of both branches of the legislature present and voting. This amendment (Article LXII; for complete text see Appendix D) was proposed and ratified with the budget amendment. Its obvious tendency will be to hold in check unwise and extravagant loans.

STATE SOLDIERS' BONUS

Before leaving the question of debt, let me say a word about the method used in financing the state soldiers' bonus. Massachusetts allowed each veteran of the war $100, by legislation adopted in 1919 (St. 1919, c. 283, 307, 342, 346). The total expenditures have been upwards of $20,000,000.

RECEIPTS AND PAYMENTS, SOLDIERS' BONUS FUND OF 1919, AS OF NOVEMBER 30, 1923

Receipts

Special state taxes 1919-1921	$1,980,000.00
Civilian war poll taxes 1920-1923	12,315,042.00
Special corporation taxes 1919	4,241,608.51
Special inheritance taxes 1919	1,306,070.56
Special income taxes 1919-1922	2,854,793.47
	$22,687,514.54

Payments

Gratuities	$18,219,344.40	
Expenses	233,682.55	
Interest on short-term notes issued in anticipation of tax receipts	1,439,215.71	
Transfer to military service (1917)	246,040.00	$20,138,282.66
Balance, November 30, 1923		$2,559,231.88

These payments were financed by short-term notes, met by special taxes outside of ordinary budget requirements. To meet the obligations thus incurred there was levied a special poll tax of three dollars on each male resident (veterans being entitled to abatement) for the years 1920-1923, inclusive; a special extra state tax on the cities and towns of $660,000 a year from 1919-1922, inclusive (this

tax was abolished for 1922 by St. 1922, c. 531); a special personal income tax of one-half of one per cent on taxable dividends and interest from 1919-1922, inclusive; a special 25% supplement to inheritance taxes for one year and a special income tax of 1% on foreign and domestic corporations for one year. These taxes have now lapsed. Applicants for the bonus have been paid in full; a balance of half a million dollars has been held to meet future claims and contingencies and the surplus of $2,000,000 will on or after November 20, 1924 be refunded to the cities and towns, in proportion to bonus poll tax payments (St. 1924, c. 480). Where in recent years can one find any unit of government voluntarily refunding surplus taxes collected in excess of requirements and where among American states can be duplicated the accomplishment of having paid a soldiers' bonus of $20,000,000, raised the necessary funds by direct taxation, and paid off within five years all outstanding obligations and closed the book?

V. Conclusions

The budget experience of Massachusetts justifies the conclusion that the executive budget system has proved a valuable preventive measure against public extravagance. Since its adoption in 1918 state appropriations and expenditures have been held down to reasonable figures; the direct state tax on cities and towns has been reduced and a remarkable decrease effected in outstanding state debt.

The budget came at the right time. The necessities of the war were forcing curtailment of all but essential expenditures. The Capital Issues Committee of the Federal Reserve Board was discouraging state and municipal bond issues which might compete in the investment market with the Liberty Loans. Governor Samuel W. McCall—from the experience of twenty years in the national Congress—recommended the adoption of the budget in 1918. Both statute and constitutional amendment had the support of intelligent public opinion. Those legislators who at first favored a legislative budget submitted with good grace to the successful executive plan. Under Governor Calvin Coolidge and Governor Channing H. Cox the budget has each year been wisely planned and efficiently executed. An excellent spirit of cooperation has prevailed. It has been the custom of Governor Cox to hold conferences on budget matters with the presiding officers of the Senate and House and the Senate and House Chairmen of Ways and Means. This has resulted in a budget program approved in advance by the leaders of the legislature, as well as by the executive. Among legislators who have contributed to budget progress, due recognition should be awarded to Hon. Joseph E. Warner, Chairman of House Ways and Means from 1916 to 1918 and Speaker of the House in 1919 and

1920; Hon. Charles L. Gifford, Hon. Leonard F. Hardy and Hon. Walter E. McLane, Senate Chairmen of Ways and Means; Representatives Frank E. Lyman and Henry L. Shattuck, House Chairmen of Ways and Means; Hon. Frank G. Allen, President of the Senate from 1921 to 1924, and Homer Loring, Budget Commissioner in 1923 and 1924. The staff officials who have done the technical and detail work of the budget have remained permanently in office. Hon. Thomas W. White, having previous legislative experience in House and Senate, a member of the former Commission on Economy and Efficiency and later Supervisor of Administration, has continued in state service as a member of the new Commission on Administration and Finance. Mr. Carl A. Raymond, former Deputy Auditor of the state, and now assistant to the Budget Commissioner, has had during all this period direct charge of the review of estimates and the preparation of appropriation bills. The success of the budget has been in large measure due to the wide knowledge of state affairs, the tact and discretion and the unflagging interest of Mr. White and Mr. Raymond.

The Massachusetts budget is a native product. It did not attempt to disturb the traditional balance between the executive and legislative branches of government. It has deserved and won increasing support. It is not perfect, but it works. It has forced the application of common sense and sound business principles to the affairs of government. To conform to its requirements the rules and procedure of the legislature have been modernized, simplified and improved. It has increased public interest in state expenditures and revenues and has given the newspapers an opportunity to present real news about the treasury of the state.

During the budget period one political party has been in continuous control of the governorship and both branches of the legislature. A different and perhaps more difficult situation may develop if the control of the government is again divided between two political parties, but under any conditions the budget cannot fail to help the good and discourage the bad in public finance. This discussion has not touched upon the form and arrangement of the budget documents. Standards now in use can unquestionably be improved. Real defects could be pointed out, but they do not affect essential principles. The budget of 1924 made no reference to the unexpended balance of two and a half million dollars in the soldiers' bonus fund of 1919, although the Governor referred to the matter in his annual address and the legislature, after long debate, voted to return two million dollars of this amount to the cities and towns, as above stated. The budget also contained no reference to the special taxes being collected this year and amounting to three million dollars to liquidate existing claims of national banks and thus effect a temporary compromise of a very difficult problem. To

be sure, these matters did not affect current expenditures and revenues for the general management of the state, but financial problems of such great difficulty and importance should not be wholly omitted from the budget.

My conclusion is that the budget is not merely a valuable, but is an essential feature for any unit of government, large or small. It is a good instrument to work with. It will not guarantee good results, but without it good results are almost impossible to obtain. The foregoing facts, statistics and observations are submitted in the confident belief that students of government and public officers who desire to find a simple, democratic and typically American budget system, correct in theory, successful in operation and proved by the results, will make no mistake in approving and applying elsewhere the budget principles now established in the commonwealth of Massachusetts.

Appendix A

Complete text of General Laws, Massachusetts, 1921, c. 29, secs. 3 to 6 inc., as amended to 1924:

Section 3. Every officer having charge of any office, department or undertaking which receives an annual appropriation of money from the commonwealth, including annual appropriations to be met by assessments, shall annually, on or before October fifteenth, submit to the budget commissioner statements showing in detail the amounts appropriated for the current fiscal year, and estimates of the amounts required for ordinary maintenance for the ensuing fiscal year, with an explanation of any increased appropriations recommended, and with citations of the statutes relating thereto, and statements showing in detail the revenue and estimated revenue of the office, department or undertaking in his charge for the current fiscal year and his estimate of the revenue from the same or any additional sources for the ensuing fiscal year, with his recommendations as to any changes in the management, practices, rules, regulations or laws governing the office, department or undertaking in his charge which would effect an increase or cause a decrease in revenue from operations, fees, taxes or other sources or which would facilitate its collection, together with any other information required at any time by the budget commissioner. The said estimates shall not include any estimate for any new or special purposes or objects not authorized by statute.

Section 4. Officers and heads of departments who, in their annual reports or otherwise, recommend or petition for the expenditure of money by the commonwealth from any source of revenue, including expenditures to be met by assessments or the issue of notes or bonds, for any purpose not covered by the estimates required to be submitted under the preceding section shall annually, on or before October fifteenth, submit detailed estimates thereof to the budget commissioner, together with any other information required by him.

SECTION 5. The comptroller shall annually, on or before December twenty-sixth, prepare and file with the clerk of the house of representatives and with the budget commissioner statements of state accounts setting forth in comparative tabulations the estimates filed under section three and estimates of all claims and other expenditures authorized by law, including interest, sinking fund and serial bond requirements, the appropriations for the preceding fiscal year and expenditures for all state purposes for the preceding three fiscal years. The comptroller shall further prepare and file with said clerk and budget commissioner, on or before said December twenty-sixth, his estimates for the ordinary and other revenue of the commonwealth in comparative tabulations with the actual revenue for the preceding three fiscal years, together with a statement of the free or unencumbered cash balance and other resources available for appropriation.

SECTION 5A. Each department, office and commission responsible for any great amount of physical property shall annually submit with its budget estimates forecasts of probable annual construction expenditures for such period of years as shall be appropriate for such department, office or commission. Such forecasts shall be itemized, and items shall be classified for each year under one of three following classes: "necessary," "desirable" or "contingent". The first class shall include work that is a part of a fixed and continuing program or is unavoidably necessary.. The second class shall include items of work advantageously provided for at that time, but which might be postponed or possibly advanced. The third class shall include work dependent upon some other developments which cannot be definitely predetermined. Such forecasts may be modified from year to year to conform to changing conditions. The budget commissioner may from time to time fix or change the form of the forecasts, the classification of the items contained therein or the period of years to be covered thereby.

SECTION 6. The budget commissioner shall study and review all estimates and requests for appropriations and other authorizations for expenditures of state funds filed with him as provided by sections three and four, and shall make such investigations as will enable him to prepare a budget for the governor, setting forth such recommendations as the governor shall determine upon. The governor may call upon the comptroller for information relative to finances and for assistance in the preparation of the budget. The budget shall be submitted by the governor to the general court annually within three weeks after the general court convenes, and it shall embody all estimates, requests and recommendations for appropriations or other authorizations for expenditures by the commonwealth. The budget shall be classified and designated so as to show separately estimates and recommendations for: (*a*) expenses of administration, operation and maintenance; (*b*) deficiencies or overdrafts in appropriations of former years; (*c*) new construction, additions, improvements and other capital outlay; (*d*) interest on the public debt and sinking fund and serial bond requirements;

and (e) all requests and proposals, for expenditures for new projects and other undertakings; and shall include in detail definite recommendations of the governor relative to the amounts which should be appropriated therefor. The budget shall also include definite recommendations of the governor for financing the expenditures recommended, and the relative amounts to be raised from ordinary revenue, direct taxes or loans. All appropriations based upon the budget to be paid from taxes or revenue shall be incorporated in a single bill to be designated the general appropriation bill. With the budget the governor shall submit to the general court such messages, statements or supplemental data relative thereto as he deems expedient, and from time to time during the session of the general court he may submit supplemental messages on recommendations relative to appropriations, revenues and loans.

Appendix B

Art. LXIII of the Amendments to the Constitution of Massachusetts (the Budget Amendment):

Art. LXIII. Section 1. *Collection of Revenue.* All money received on account of the commonwealth from any source whatsoever shall be paid into the treasury thereof.

Section 2. *The Budget.* Within three weeks after the convening of the general court the governor shall recommend to the general court a budget which shall contain a statement of all proposed expenditures of the commonwealth for the fiscal year, including those already authorized by law, and of all taxes, revenues, loans and other means by which such expenditures shall be defrayed. This shall be arranged in such form as the general court may by law prescribe, or, in default thereof, as the governor shall determine. For the purpose of preparing his budget, the governor shall have power to require any board, commission, officer or department to furnish him with any information which he may deem necessary.

Section 3. *The General Appropriation Bill.* All appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill. The general court may increase, decrease, add or omit items in the budget. The general court may provide for its salaries, mileage, and expenses and for necessary expenditures in anticipation of appropriations, but before final action on the general appropriation bill it shall not enact any other appropriation bill except on recommendation of the governor. The governor may at any time recommend to the general court supplementary budgets which shall be subject to the same procedure as the original budget.

Section 4. *Special Appropriation Bills.* After final action on the general appropriation bill or on recommendation of the governor, special appropriation bills may be enacted. Such bills shall provide the specific means for defraying the appropriations therein contained.

SECTION 5. *Submission to the Governor.* The governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of such bill as he approves shall upon his signing the same become law. As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reason for such disapproval or reduction, and the procedure shall then be the same as in the case of a bill disapproved as a whole. In case he shall fail so to transmit his reasons for such disapproval or reduction within five days after the bill shall have been presented to him, such items shall have the force of law unless the general court by adjournment shall prevent such transmission, in which case they shall not be law.

APPENDIX C

Ruling of Benjamin Loring Young, Speaker of the House of Representatives. From Journal of the House, April 7, 1922.

The Resolve to provide for the construction of additional buildings at the Soldiers' Home in Massachusetts (House, No. 378, changed) was read a second time.

In answer to an inquiry by Mr. Lyman of Easthampton, as to whether or not the resolve violated the provisions of Section 4 of Article LXIII of the Amendments of the Constitution, the Speaker ruled as follows:

Article LXIII of the Amendments of the Constitution is the so-called "budget" amendment. It provides for the recommendation of an annual budget by the Governor, and requires that "All appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill." It further provides that, "before final action on the general appropriation bill," the General Court "shall not enact any other appropriation bill except on recommendation of the governor."

The Chair does not, of course, intend to encroach on the prerogatives of the judicial branch of the government in determining questions of constitutional law. In this particular instance, however, the constitutional question directly relates to the form and manner of proceeding in legislation, and as a parliamentary question the Chair must rule upon the same, although it depends upon the provisions of the Constitution for its solution.

The general appropriation bill of the current session has already been enacted into law and signed by the Governor (Chapter 129). The General Court may now, therefore, act under Section 4 of said Article LXIII, which provides that "After final action on the general appropriation bill or on recommendation of the governor, special appropriation bills may be enacted. Such bills shall provide the specific means for defraying the appropriations therein contained."

The resolve in question (House, No. 378, changed) is in part as follows:

"*Resolved,* That there be allowed and paid out of the treasury of the commonwealth the sum of three hundred thousand dollars to be expended under the direction of the trustees of the soldiers' home in Massachusetts, located at Chelsea, for the construction and furnishing of additional buildings at said institution. . . ."

The first question which the Chair must determine is whether or not this proposed legislation is an appropriation bill within the meaning of the Constitution. The fact that it is a resolve and not a bill the Chair does not consider material. Nor does the Chair consider as decisive the various rulings of previous Speakers as to that clause of the Constitution which provides that "all money bills shall originate in the House of Representatives." There are some authorities which give a very narrow construction to the term "appropriation bill," and hold it not to include a general authorization or direction to a state department to incur obligations or authorize expenditures. These authorities say that a setting aside in the treasury of a specific sum is an essential attribute of an appropriation bill.

To decide the question the Chair must consider the purpose for which the amendment was adopted and ratified. It was obviously to provide a method whereby the Executive may submit to the legislative branch of the government a complete financial plan for the Commonwealth for any fiscal year, including both revenue and expenditures. The Governor has complied with his constitutional duty, and has submitted a budget setting forth all appropriations recommended by him for the current fiscal year, together with a complete plan of revenues and taxation to finance the same. The amount of taxation needed to finance the government of the Commonwealth has therefore been substantially determined by the passage of the general appropriation bill based upon the Governor's budget.

The Governor did, in the "budget" message, reserve a certain sum of money for contingencies which might arise during the session, and the General Court by reducing some of the recommended appropriations has left available for further appropriation a certain additional amount. Except for this amount there is obviously no money in the treasury or general fund available for any expenditures whatever upon the revenue program recommended by the Governor. Under the "budget" amendment the General Court must, when it passes a special appropriation bill, provide over and above the Governor's revenue program the specific means for defraying the new appropriation. The Constitution holds the Governor responsible for recommending revenue sufficient to meet all the appropriations which he recommends, and it also holds the General Court exclusively responsible for suggesting the additional revenue required to finance special appropriation bills.

The resolve in question provides "that there be allowed and paid out of the treasury of the commonwealth the sum of three hundred thousand dollars." The Chair is of the opinion that these words do not comply with the "budget" amendment. A bill or resolve which merely states that the necessary money to carry out

a project shall be taken from the treasury or general revenue of the Commonwealth clearly does not provide the specific means for defraying the expense.

This resolve would take $300,000 out of the treasury and put not one cent into the treasury; and there is no suggestion as to what means should be adopted to raise the money the expenditure of which it directs.

It may be suggested that this resolve does not specifically appropriate money, and is therefore not an appropriation bill. The Chair is of opinion that the resolve is within the term "appropriation bill" as used in the "budget" amendment, for if it became law it would authorize the trustees of the Soldiers' Home to incur obligations to the amount of $300,000, thus creating a moral obligation on the Commonwealth to pay the bill. It might well be a legal obligation also, were it not for the provisions of the Constitution. The chairman of the committee on Ways and Means pointed this out on February 11, 1919, in a statement made to the House of Representatives relative to the general appropriation bill for 1919, the first year the "budget" amendment was in operation (see House, No. 1370 of 1919).

The Chair is of opinion, therefore, that the resolve does not conform to the budgetary requirements of the Constitution, and if a point of order should be raised the Chair would feel constrained to rule that the resolve was not properly before the House.[5]

Appendix D

Article LXII of the Amendments to the Constitution of Massachusetts (the State Credit Amendment):

Art. LXII. Section 1. The credit of the commonwealth shall not in any manner be given or loaned to or in aid of any individual, or of any private association, or of any corporation which is privately owned and managed.

Section 2. The commonwealth may borrow money to repel invasion, suppress insurrection, defend the commonwealth, or to assist the United States in case of war, and may also borrow money in anticipation of receipts from taxes or other sources, such loan to be paid out of the revenue of the year in which it is created.

Section 3. In addition to the loans which may be contracted as before provided, the commonwealth may borrow money only by a vote, taken by the yeas and nays, of two-thirds of each house of

[5] At a subsequent reading the Resolve in question was amended to comply with the ruling (House Document 1559 of 1922). The amendment specified as the revenue to be applied to the purposes of the Resolve certain unexpended receipts of the soldiers' bonus fund of 1919, a special fund not included in annual budget figures) see "State Soldiers' Bonus" on p. — of this report). The Resolve, as amended, was then rejected by the House. As a practical matter the ruling of the Chair made impossible the passage of the Resolve which otherwise without the budget control applied by the ruling would almost surely have become law.

the general court present and voting thereon. The governor shall recommend to the general court the term for which any loan shall be contracted.

SECTION 4. Borrowed money shall not be expended for any other purpose than that for which it was borrowed or for the reduction or discharge of the principal of the loan.

CHAIRMAN LONG: I am directed to announce that when we adjourn this afternoon it will be until eight-thirty this evening, when the evening session will start.

You have heard some interesting papers this afternoon, and following the custom of the conference, they are now open to discussion; and I am reminded of what our respected and beloved Vice-President, Dr. Page, told us last night, that we could emulate a bear-pit. I think we have plenty of subject-matter here for a lively bear-pit, if we only will unloosen ourselves. I shall be glad to recognize anyone. I know that one of the three who have taken part in the exercises will be glad to answer any questions. I don't know all of you, although I have the pleasure of knowing a large number, and I would request that the gentlemen announce their names for the purpose of the record.

MR. EDMONDS (of Pennsylvania): I should like to ask Speaker Young two questions regarding the operation of the budget. In the first place, you said that if the government did not allow a sufficient amount of money to a certain department, that department might come to the legislature and ask for more.

In Pennsylvania, if the department head did that, he might be *persona non grata* to the Governor who appoints him, and I was wondering how often it happened in Massachusetts that a department head had the nerve to come to the legislature in a case of that kind.

Again, doesn't Speaker Young favor putting the special fund from automobile licenses into the general fund of the treasury?

SPEAKER YOUNG: Taking up the last question first, the amounts collected from vehicles and fines are, under the statute, regarded as a special fund in the treasury. They can be expended only on appropriation like any other money in the treasury, but there is a statutory provision that they must be spent on the highways, because it is collected under the excise. Under the taxing clause of our constitution we have felt that there might be some doubt of its constitutionality if it were turned into the special fund, without some string on it.

So far as practical results are concerned, the motor vehicle taxes and fines might just as well be a part of the tax law, because we always spend that much for highways, and it is a matter of words and not of substance.

Now, on the matter of department heads coming before the Committee on Ways and Means of the legislature, the Joint Committee asks every department to come before it. In other words, it spends about three weeks studying this budget, which has previously been studied for several months by the Budget Commission and the Governor. The legislature does not take the figures merely because the Governor says they are all right. It convinces itself that they are all right, and there is a duty upon the heads of the departments to answer questions which are asked by the members of the Committee on Ways and Means. They do not need to come before the committee and attack the Governor or criticize him, but the facts will be brought out in a perfectly proper manner, and if there were any question of political difficulties involved, the committee could receive written reports from the departments. It might well be that we would have a Governor who was hostile to some particular work of the state, like the Department of Education or Forestry, and the department head could come and tell his story to the legislature, which holds the purse-strings, and the facts in the case would never be brought to public attention.

JUDGE LESER (of Maryland): I should like to ask Mr. Young a question: What effect has this budget system? Does it have the effect of reducing the legislative sessions? I understand your legislature meets about five months in every year.

MR. YOUNG: We do meet about five months in every year, and if you can tell us some way to shorten it, we shall be very much obliged. We have tried about everything, but it has been the custom for a couple of centuries to have it that way, apparently, and we cannot seem to change it. The budget has had unquestionably some effect in shortening sessions, and we have had them a little shorter in recent years than we did ten years ago, but the difference is not appreciable. The real reason that we have long sessions in Massachusetts, Judge, is because Boston is the capital city, and a great majority of the House and Senate live in or about Boston, or within easy riding distance, and they are able to continue their own personal affairs and business more or less, right along, and they do not find inconvenience in the long session, the way men would from all over the State of Illinois going to Springfield and staying there until the work was done. If our capital was down on the Island of Nantucket, we should get the work done in about three months, instead of six months as it is now.

CHAIRMAN LONG: We also, Judge, have in Massachusetts the right of every citizen to petition for legislation, and to have that petition heard by a committee and reported and acted upon by both branches. You know, in Massachusetts we have everything out

under the light of day, so every one has a chance and every one sees what is happening.

MR. SIMMS: What compensation does a member of the legislature of Massachusetts receive annually?

CHAIRMAN LONG: Fifteen hundred dollars a year and his traveling expenses.

MR. YOUNG: Fifteen hundred, and the presiding officer three thousand. (Laughter)

MR. EDMONDS (of Pennsylvania): Mr. Gottlieb of the Industrial Conference Board had certain charts that he did not explain to us. I move that further time be extended for the purpose of enabling him to explain those charts.

CHAIRMAN LONG: Mr. Edmonds of Pennsylvania moves that Mr. Gottlieb be allowed to continue his talk to explain the charts.

(Ayes and Noes)

(Motion carried)

MR. GARY: Before Mr. Gottlieb starts to explain those other charts, I should like to ask one question about this chart here (indicating chart). You have exempt property, twenty per cent of the other property there: does that mean only real property or all other property?

MR. GOTTLIEB: The value of wealth, you know, includes tangible property, and the total wealth in 1921, as we estimated it, was 275 billions; in 1922 it is estimated by the Census Bureau at 320. Other property is, therefore, other tangible property.

MR. GARY: But the comparison is the same; the twenty per cent also includes other tangible property?

MR. SUTHERLAND: I should like to ask Mr. Gottlieb what the principal character of the exempted real property is.

MR. GOTTLIEB: There are churches, schools, and all public property, cemeteries, cemetery companies, charitable organizations, temperance societies, lodges, and so forth and so on, historical societies, museums, historical gardens, public libraries, and so forth.

MR. RUSSELL: I should like to ask if the figures given here in this paper relate to revenue collected or to taxes assessed? Which is it?

MR. GOTTLIEB: In federal and state taxation, a greater part is taxes collected. For a great many years we had to take taxes assessed.

(Mr. Gottlieb thereupon read several charts and explained them)

MR. SIMMS: Mr. Gottlieb, what is your estimate of the total property, tangible and intangible, exempt from taxation in this country?

MR. GOTTLIEB: This estimate was made about a year and a half ago. Subsequent to that we made a fresh estimate as of June 30th, this year, and our estimate is fifty-five billion dollars.

I brought these charts along merely because they might be of interest.

(Mr. Gottlieb read from his paper and explained charts further)

MR. MCKENZIE: I should like to ask the gentleman one question. That last chart; does that show that the national income per capita in the last year is greater or less than it was in 1913—the purchasing power per capita.

MR. GOTTLIEB: Less than in 1913—342 against 354.

MR. ZANGERLE: There is another chart that I could not understand. You talk of the ratio of the farmer's income to taxes, as compared with all other income.

MR. GOTTLIEB: In the upper part of the chart we show the amount of income of the farming community and the rest of the community. This (indicating) is the amount of total taxation paid by farmers and that paid by the rest of the community is in blue. You see the farmer has paid about 624 million in 1913, as compared with 1570 paid by the rest of the community. The total tax will be the same as the other chart. In 1919 farm taxes increased from 624 to 632, and so forth.

(Mr. Gottlieb read further charts)

MR. DYER: I should like to know what you include in the farmer's income.

MR. GOTTLIEB: I will place the burden of proof on an organization in New York, the National Bureau of Economic Research. We have taken their figures. The National Bureau of Economic Research is, as you know, an organization composed of a number of economists. I happen to know how the figures are gotten up. They take gross income, deduct all expenses, taxes and interest on farm mortgages and farm wages, and so forth.

MR. DYER: Did they in that committee or organization charge to net income what was used upon the farm, plus the rent of the farm buildings?

MR. GOTTLIEB: No.

MR. DYER: I was trying to explain this cash income.

CHAIRMAN LONG: What they are interested in is how much you charged the farmer for his Johnny cake.

MR. ZANGERLE: Do we understand the rent for the use of the farmhouse was considered here as part of the income of the farmer? And while I am on my feet, may I ask what these other groups are? Does that take care of lawyers, doctors, and so forth? Were these figures taken from the United States income figures as grouped by the income data?

MR. GOTTLIEB: The National Bureau of Economic Research has been trying to do the best they can with the figures they have on the totality of the income; value of services, and commodities produced in this country, year by year, and they have divided groups into agriculture, manufacturing, mining, professions, and so forth. This other group here includes everything but farmers; so the sum total of these two groups is the national income. I haven't the farmers' income here, but the farmers' income is secured from the classification made by the National Bureau of Economic Research.

MR. ZANGERLE: Maybe the income of a farmer from stocks and bonds is included in the other items.

MR. GOTTLIEB: It would be included in his income.

MR. ZANGERLE: Not what you designate there as "other"?

MR. GOTTLIEB: No; it would be included on the farm.

DR. PAGE: Does Mr. Gottlieb know what the materials were from which the bureau ascertained the farmer's income? What was the character of the material on which the appraisal of the farmer's income was made?

MR. GOTTLIEB: I am afraid the burden of proof should fall on the National Bureau, but they have taken the value of property and value of animal products, as reported by the United States Department of Agriculture, then they have determined the proportion of grain fed to animals, and so forth. They deducted depreciation of buildings, amounts paid out, and wages and salaries to farm labor, the amount of taxes, the amount paid in interest, and have arrived at the income from the farming industry, then they added to that the rental value of the home and the food consumed by farmers on farms, and the income from stocks, bonds and investments and arrived at a grand total. That is their general method.

QUERY: In arriving at the net income, did you give anything for his services and his family's services?

MR. GOTTLIEB: I did not make any of these estimates, but the National Bureau of Economic Research did; so far as I know, they did not allow any return for their own services.

MR. ZANGERLE: I should like to know what the term "farmer" means; a farm owner or a farm tenant.

MR. GOTTLIEB: Both; it includes anybody operating a farm on tenancy or fee simple.

MR. ZANGERLE: Of course, the owner is not operating it always.

CHAIRMAN LONG: A good many questions are being directed at the base on which Mr. Gottlieb starts, and he has accepted the base without going back of that. It is rather unfair.

MR. GOTTLIEB: I accepted them, because the National Research Bureau enjoys an unusually high appreciation in the field of economists.

DR. PAGE: As to the National Research Bureau, these data are collected by a very small group of very competent, trustworthy men. As far as the matter can be shown statistically, I presume we should take their statistics as readily as those of any other agency in the world. Frankly, I have got to say that matters of that kind do not strike me as invariably showing correct results. I have a great deal of sympathy with what the gentleman from Oklahoma said as to how you are going to show the net income for the farmers of the United States in the year 1921 and say that the taxes paid by the farmer in that year were less than twenty per cent of that net income, which is contrary to experience in Wisconsin and other states where they have attempted to enforce an income tax for many years, just as in the Federal Government.

Now, this thing of trying to get at the net income of the farming population appears to be a matter that is beyond human capability. You may make a certain number of arbitrary estimates as to what the value of the food is that the farmer consumes off his place, and so forth, but there is no average of that consumption that you can get.

The same thing applies to most things consumed on the farm. Those estimates are estimates that are reached with sometimes approximate good judgment and sometimes by the application of methods so arbitrary that they do not really present a practical picture of what actually transpired. It would be, I think, a very helpful thing to us in this association, and it would help our thinking about a great many matters that are now called inequalities, as well as in social matters, if we could accept figures of this kind, but I do not believe that we can quite do that, and therefore I think perhaps we ought to utter a little word of warning on the danger of attaching too much influence to well-drawn statistical graphs that present things that may or may not be true. So far as these figures go, I give them personally as much confidence as I give to figures compiled by any other agency that I know of, but even

those figures, compiled by those men for this particular purpose, I must say that I can not accept with sufficient credibility to confirm my future thinking upon this problem.

I want to say in behalf of Mr. Gottlieb's paper, as was true of the other papers we heard this morning, I think it was an extremely able paper; I think it will be highly suggestive; it was a strong incentive to good thought, and the actual concrete information he gave us was extremely valuable, and I don't want him to think that what I say with regard to agricultural statistics is any reflection either upon his paper or his own clearness of thought, or anything else. The truth is he has not claimed for these figures any more credibility than is usually given them. I do not want to reflect on the general conclusions at which he tried to arrive.

CHAIRMAN LONG: We have a situation here that we have figures that we cannot at least disprove. I prepare figures myself, occasionally. I figure that the real weakness of them is that the individual tries to apply those figures which are made by averages to his own particular case, and that is always very dangerous to any statistician's figures.

MR. MCKENZIE: I want to ask the last speaker whether his objection to those figures applied simply to the agricultural figures, or whether they applied in general to the statistics. Was your objection directed to the agricultural end of these figures or to finding them?

DR. PAGE: I had in my mind this particular chart here. I think, so far as the statistics relate to prices, we may accept them without criticism. We also have statistics of wages at the present time, and those are things we should get at when we are talking about net income, where you have got to take values of the farmer's products, together with the quantity of his products and deduct from that several items; and I do not think that the result can be accepted by men who do much thinking along these lines. Does that answer your question?

CHAIRMAN LONG: I should imagine, Dr. Page, what you have said would apply to all kinds of statistics. I have never seen any yet, except those of something that happened a good many years ago, but what they could be pretty well knocked out.

DR. PAGE: The old maxim that figures never lie has to be taken, of course, with a grain of salt. It has been said that figures never lie, liars sometimes figure.

So far as the people who have made these statistics are concerned, I think they are about as trustworthy as anybody who has ever made statistics. You can rely on their accuracy too, because nothing that is going to be misleading is going to be permitted to

go in. But statisticians are very much like other bodies, they are sometimes tempted to let the imagination have sway, and it is dangerous to do that sometimes.

MR. MCKENZIE: I should like to bring to the attention of the people of New York and of the other states the figures Mr. Gottlieb has presented. They are borne out in our own state almost exactly; so while I think there may be some question in applying averages, and all that sort of thing, all the evidence today bears out the accuracy of Mr. Gottlieb's statement.

MR. DYER: I believe it was said in speaking of the budget system that it was being used in a good many of the local taxing districts, and I should like to ask Speaker Young how much that has occurred in Massachusetts, and why that law is not mandatory as to local taxing districts. We have such a law drawn in Ohio for presentation to the legislature next winter. There is a good man here, and we should like to have his opinion.

MR. YOUNG: Mr. Chairman, it is a little hard to answer the question of the gentleman. There are one or two reasons, which I touched on briefly when I spoke, why it is difficult and wellnigh impossible to have a complete budget system in cities and towns in Massachusetts. One of them, for example, is that the income tax varies somewhat from year to year. The tax is not collected and reimbursed to the cities and towns until November. Of course, appropriations are voted in the winter or early spring of the calendar year, our town fiscal year being the calendar year, and you have to guess a little at what your estimated revenue is going to be; you do that also in the state in making estimates of revenue.

I happen to have been for a number of years a selectman in one of the towns in Massachusetts. The board of selectmen exercise some administrative authority, but no legislative authority, and we always endeavor to submit to the voters of the town in printed form a tentative town budget; what the budget should be.

We have made a good deal of progress in recent years in enforcing the budget system in municipalities. The mayor of each city is required to submit a budget each year. The thing has not yet got to final form, and the figures do not show as good progress in municipal budgets in Massachusetts as in the state, but we are working in that direction, and I think that shortly we shall have there a good, sound, general municipal budget law passed and in operation for every town and city in the state.

I might say, in anticipating what some of the later discussions are going to bring out, that we have some control by the state of local expenditures. We have a general debt limit law of three per cent of the valuation for towns, and two and one-half per cent for cities, and in order to borrow outside of that limit, cities and towns

have to come to the legislature for special legislation. That may be granted only by law, and that is one of the reasons we have a long session, because the applications for borrowing outside the debt limit take up a large part of the time of the legislature, and make up the work of one of the busiest committees, the committee on finance.

One of the things we have given a great deal of thought to is the creation of some department which would have jurisdiction to allow loans outside of the debt limit, instead of being required to enact each year a great many special acts, and I am looking forward to a discussion of the Indiana plan.

Mr. Philip Zoercher (of Indiana): I just want to say to the gentleman that in a talk that will be given tonight, we shall show the success of the budget system as applied to every municipality in the State of Indiana, and every municipal corporation.

Mr. Gaskill (of Cleveland, Ohio): I should like to ask Speaker Young a question. He has stated ably the relation between income and expenditures of the State of Massachusetts. I was wondering what was the tendency as to expenditures alone, excluding the relation between income and expenditures. That is, as to whether expenditures have been less since the institution of the budget system or whether they have increased. I understand that there has been a soldiers' bonus, which, of course, would raise it considerably, and I assume that he would exclude that in whatever comparison he would make.

Mr. Young: I could not go into all these aspects of expenses of the state for all purposes, but I have a statement here which shows that the expenses of the state increased from twenty millions in 1912 to thirty-six millions in 1918, when we adopted the budget system. It also shows the percentages; an increase of thirteen million dollars in five years. The expenses from the adoption of the budget in 1918 to 1923 show a further increase of from thirty-six millions to forty-five millions; but you must remember that that period included the great increase in the cost of living, which I suppose was forty per cent, although I may not be accurate on that point.

We have fifteen thousand state employees and thirty thousand inmates of institutions in Massachusetts, whose food, clothing and shelter was about the largest expense, and which also included war expenses not covered by that bonus.

From 1917 to 1922 the increase in the regular departmental expenses—and that means capital outlays for new buildings, roads and the like, and everything else—was 36.3 per cent. I have not got the figures of increase from 1917 to 1923 for all states, but I

have figures for a large group of states, taken from the Bureau of Census, from 1915 to 1922, approximately the same period, showing an increase of 142 per cent, which shows that our state expenses as well as our state debt were kept in check far better than the average of all the states.

The direct state tax on cities and towns ought not to be given too much emphasis, because the state tax is merely the balance assessed on the communities, depending on the variation in other tax revenues. At the same time it is interesting to know that before the budget, from 1912 to 1917 and 1918, it increased from six millions to eleven millions, and although it showed during the war a temporary increase to fourteen millions, it dropped to twelve millions, and now is ten millions. We have kept expenses in check. We have increased about 33 per cent, whereas generally in the country it was about 100 per cent.

MR. MCKENZIE: Do I understand from your statement that you have had just one elastic element in your tax system, and that is the direct tax on tangible property?

MR. YOUNG: The other is elastic to the extent that it varies. We cannot always prophesy in advance how much we are going to get out of the inheritance tax. We have to make an estimate on it.

MR. MCKENZIE: You have an income tax and a corporation tax. Do these vary?

MR. YOUNG: They are a set figure. The only balance-wheel that checks up at the end of the year is the state tax on cities and towns.

MR. MCKENZIE: Is there any reason in equity why the other forms of property should not help take up that slack?

MR. YOUNG: No, but I guess it is a complicated problem to work out. Perhaps we should direct our attention to it in the future. In 1923 we were suddenly faced in the middle of the session with the problem of national bank taxation. It staggered us, but we went straight to work, got in all the banks of the state, and effected a compromise at the end of the session of 1923, by which we enacted a special appropriation bill. This was done by the legislature and not by the Governor, although he was consulted in the matter. We appropriated three millions of dollars. We settled on the basis of 33⅓ per cent all the outstanding claims of the banks, which we thought were valid in law, and we provided a special extra tax. It was too late to assess it in 1923. That is as remarkable an achievement in state finance as the soldiers' bonus matter. These other improvements in our tax laws will doubtless follow in due time.

PROFESSOR CARL C. PLEHN: It has been very refreshing to have

so optimistic an account of the working of the budget system in Massachusetts, and I want to express my feeling that the use of the budget system is one of the few available remedies for extravagance in the finances of the state, municipality, school district, or any other spending body. It seems to me that we can easily get so enthusiastic about it as to lose sight of the possibilities that there may be difficulties in its operation, and without wishing to throw the least bit of cold water on the optimistic attitude, I should like to suggest that we think about some of those things that may cause difficulty.

Let us take the case where the governor and the legislature are not in perfect harmony, or go one step further, which is not impossible at all, and has occurred, where the governor is practically the boss of the state and absolutely controls a large or effective working majority in the legislature. Now, according to the tenor of his political views, whether he be a governor who wishes to spend for all the things that a social democracy is demanding, or whether he be parsimoniously economical—whichever happens to be his political tendency—that program goes through without any reference to extravagance or the reverse, without any particular reference to efficiency. That is one situation that you may have.

Let us take the other case, where it happens quite frequently that the executive is at outs with his legislature or the legislature is entirely out of harmony with his views, there you can have difficulties of another sort. The governor brings in a budget. I think, as human nature usually runs, he is likely to bring in a fairly economical budget, although I can conceive of a condition under which he might bring in a very liberal one for the time being, for perhaps some pet schemes of his own that might cost a great deal of money. Now, under those conditions, what difficulties do you encounter? You may have a legislature which, in order to show what the political evils are, may want to appropriate exceedingly liberally over and above the governor's recommendation. If the governor is an economical fellow, it stops extravagance to a certain extent, but it also may block desirable legislation. We have had a number of exhibitions recently. We have had an exhibition of the same thing in the Federal Government, where the executive stands for economy and the legislative body stands for extravagance. That, I think, however, in the long run would be likely to prove not to be a permanent condition. I think what is more likely would be that the legislature, instead of regarding, as some of them have, the executive budget as a minimum, and trying to spend more, would ordinarily regard the executive budget as a maximum and try to cut under.

There is still one other difficulty that I might state you are confronted with, and which will arise in many of the states that have the initiative, referendum and other forms of direct legislation.

We had in our state recently a case where a contribution made to the schools was doubled in one initiative bill, which, as far as the legislature was concerned, was practically a constitutional amendment, and they did not dare to change it. Many a time an expenditure which is extremely popular is put before the people by a legislature which wants to "pass the buck" to the people and wants to get rid of the responsibility themselves, and sweeps the budget clear into the waste-basket. Those are things you have to look out for; and yet I am thoroughly convinced that the budget system is the greatest improvement that has been made in the control of public finance in the United States in many and many a year.

CHAIRMAN LONG: I should like to answer a part of that. I think the real answer to that thing, in the first place, is that of course Massachusetts is not going to have a boss that is going to boss the legislature. Supposing there is a man who was strong enough to boss the legislature: what has he got to do? If he has an extravagant budget, he has to say to the people: "We are going to give you this," or "give you that." How is he going to raise it? He is going to say one of two things: either suggest the levy of a special tax on some particular part of the activities of the people, or suggest an increase in the percentage of some tax, or suggest a heavier state tax. There isn't a boss in the land that would last ten minutes in the State of Massachusetts, or any other state, who went out to the people of that state and told them that taxes would be laid upon them to take care of the budget; I do not think it would work. You have to show exactly where the money is going to be raised from.

Dr. Plehn, of course, pointed out some things which might show a weakness in the budget. Neither Mr. Young nor any of us from Massachusetts, nor Mr. Zoercher of Indiana, claims that the budget is a cure-all for everything. We do claim it is the best thing we have so far seen.

PROFESSOR CARL C. PLEHN: Sometimes the governor thinks he can make himself popular by placing the increased burden of taxation on special interests. That is a thing that has not been unused.

CHAIRMAN LONG: The partial answer to that is here; under our constitution, the initiative and referendum are in operation; they do not operate against the budget, but they would operate against a bill which provided for that method of raising the taxes; so that just as soon as our governor went ahead and had this legislation, and told the legislature that he would act for them, and they could act as a rubber-stamp, the people could start the referendum petition on the bill, and he is kicked out of court.

I think with the experience we have had, we have plugged up

the holes pretty well in Massachusetts, although I am willing to admit that on our tax laws, as well as other laws, we have a lot to learn. We are not in position where we think we have reached an ideal point, by any means, but we have made progress, and we hope to make more progress.

JUDGE OSCAR LESER: Have you studied the Kansas system?

DR. PAGE: Suppose the governor vetoes an item in your budget; what is required?

MR. YOUNG: It is like the procedure on any veto. If he does it, it goes back to the House or Senate for two-thirds, like any other veto under our state constitution. We have never had that take place as yet, but I think it well might, particularly in view of the fact that we have now but two appropriation bills in each year.

Dr. Plehn's statements interested me a great deal. I admit all those difficulties, but I think every difficulty which he raised is inherent in the American form of government in the relations between the executive and the legislature. I think you have them without a budget, and with a budget, but I don't think they are as bad under a budget system as they are without it.

MR. SIMMS: Assuming the conditions to exist that Dr. Plehn has pointed out, it seems to me a good answer to say that the budget system or budget law is an impediment against the aggressions of the executive or the committee, as the case may be.

MR. DYER: Are not your objections, objections to party politics, the way they are conducted, instead of objections to the budget system?

PROFESSOR PLEHN: Yes, I could answer that frankly; they are. I agree with Young. I do not think it is possible in this country to have a complete budget system, because we are not willing to surrender the executive to the legislative body. If you want to surrender that, then put the administration of the law into a ministry or cabinet representing the authority in parliament or in Congress or in the legislature, and you will have a complete budget system; then you would not have those conflicts of jurisdiction, which are only intensified by the development of the initiative and referendum, making three departments of government, instead of two that might come into conflict. That is inherent, of course, in the American system.

I am an enthusiastic supporter of the budget system. I am not quite so optimistic of the people rising to repress class legislation. I am a little bit afraid they might fall in with it. I have known of such instances in the past. What I did not want to have happen was that the meeting should adjourn without once thinking that

there were difficulties. There are difficulties. There are difficulties not only in the forms of legislation and administration, but we are likely to get along smoothly and advantageously with the budget system if we recognize to begin with that there are troubles ahead. If you are going to sea in a boat and have your boat all nicely fixed up, but forget that you may run into some rough weather, you are not going to equip your boat quite as strongly. Perhaps, if you realize in advance that there are going to be rough seas to sail, knowing that the difficulties were there, you would meet them better and more squarely. To be merely optimistic and forget the difficulties you have to contend with, might not be well. That is the thing to have in mind.

(Reading of a resolution by Mr. King, which was referred to the committee on resolutions.)

CHAIRMAN LONG: If there is no objection, this meeting stands adjourned until eight-thirty P. M.

(Adjournment)

FOURTH SESSION

Tuesday Evening, September 16, 1924

President Bailey: Kindly give your attention. Our first paper will be Tax and Debt Limit Laws, by Mr. R. C. Atkinson, of Columbia University, and I take pleasure in introducing Mr. Atkinson.

Professor R. C. Atkinson (of Columbia University): Mr. Chairman; the subject as originally assigned to me included both debt and tax limit legislation, but it does not seem to be possible to cover both of these subjects adequately within the time limit, so I shall confine myself to tax limit legislation.

TAX AND DEBT LIMIT LAWS

R. C. ATKINSON
Of Faculty of Political Science, Columbia University

The immense growth of taxation and indebtedness in the last decade has focused attention anew upon the control of public expenditures. In the case of the national government considerable success has already been achieved in dealing with this problem, but in the field of local finance the problem becomes annually more acute. The recent reports of the Bureau of the Census have only served to chart more accurately the trend of governmental costs and indicate more clearly the importance of wise supervision of local expenditures. Between 1912 and 1922 the tax revenue of counties and municipalities rose 96 per cent, increasing from $1,158,000,000 to $2,277,000,000, and at the same time their indebtedness increased from $3,256,000,000 to $5,964,000,000.

It is not the purpose of this paper to examine the causes of these changes. They are many and in large part beyond the control of public officials. Nothing could of course be more unfair than much of the criticism which is meted out to those charged with the handling of local finances. Yet the amounts are so vast and the burden of taxation so great that it is both natural and proper that local expenditures should be subjected to state regulation. Careful consideration should be given, however, to the methods and forms of regulation to be applied.

Among the commonest types of state regulation in the past have been the statutory limitations on the volume of local taxation and local indebtedness. These two devices appear to supply most directly the protection which the taxpayer desires. Though they afford little positive assurance of sound management of local finances and do not necessarily block the unwise or extravagant expenditure of public funds, they may at least lighten the immediate burden upon the taxpayer. It is only natural, therefore, that these devices should be widely discussed in periods of rapidly increasing governmental expenditures. Since the two types of regulations involve quite different problems, it is desirable that they be separately considered. In this paper they will be treated individually, debt limitation being first discussed.

Debt Limit Legislation

Debt limit provisions occupy a place in the statute books of most of the forty-eight states and in the constitutions of more than half of the number. While there is great variety in the details of these provisions, the basic features are much the same. Four types of restrictions are commonly found; first, limitations on the amount of indebtedness which may be incurred; second, regulations as to the purposes for which bonds may be issued; third, restrictions upon the term for which bonds may run; and fourth, referendum provisions, requiring popular authorization of the issuance of bonds. In recent years a fifth type of regulation has also been added in the several states, namely, the requirement of serial bonds.

General limitations upon the amount of indebtedness, as applied to municipalities are to be found in about two-thirds of the states. These limitations are based either upon the total assessed valuation of all property, or of real estate, within the taxing district. In a few states the indebtedness permitted runs as high as ten per cent of the assessed valuation, but in the majority the limitation is in the neighborhood of five per cent. Numerous exceptions are usually authorized. Special assessment and public utility bonds are frequently placed outside the limits and special provision is often made for indebtedness caused by flood, epidemic or other emergency. In some cases a limited degree of additional borrowing is permitted, with the approval of the electorate.

Provisions governing the term and purpose of local bonds also form a part of the debt legislation of most states. But it cannot be said that these provisions are as a rule adequate to prevent the abuse of the borrowing power, as an examination of the bonded debt of many a community only too thoroughly demonstrates.

Widely varying use of the requirement of popular referendum on the issuance of bonds is made by the different states. In some,

the borrowing power is primarily vested in the local legislative bodies, while in others the referendum must normally be applied. In Indiana a new form of restriction has recently been placed upon the borrowing power of local officials. In that state it is now possible for ten taxpayers to compel a hearing before the state board of tax commissioners, which has the authority to reject or reduce the amount of a proposed municipal bond issue. In addition to the provisions above mentioned, a considerable body of special legislation has been enacted governing the borrowing power of individual municipalities.

There is little controversy as to the general desirability of debt limit legislation, though there is ample opportunity for criticism of many of the existing provisions. Debt limitation is an essential safeguard of the future. But for the restrictions imposed by the state, the demand for public improvements would frequently raise the local debt beyond the danger point and jeopardize the public credit, or at least impose grossly unfair burdens upon the taxpayers of the future. Indeed, debt limitation serves as the counterbalance necessary to meet the pressure of the combined desire for local improvements and low taxation. Without stringent state regulation the former might result in an excessive local debt and the latter in borrowing for current purposes, in the issuance of bonds extending beyond the life of the improvements purchased, and in the failure to make adequate provision for debt retirement. These dangers are so apparent and the impossibility of avoiding them through the mere requirement of popular referendum upon the issuance of bonds has been so frequently demonstrated that little objection to the principle of state regulation is warranted.

This does not signify, however, that the debt limit provisions ordinarily established are by any means exempt from serious criticism. The percentage limits upon the amount of indebtedness, which form the very heart of existing debt legislation, are far from satisfactory, and it is difficult to discover how they may be greatly improved. The assessed valuations upon which they are based fail in all too many cases to represent the actual value of property in the district and are in no wise free from fluctuation. Moreover, such limitations are grossly unfair, unless exception is made for bonds issued to finance self-supporting public utilities. While general limitations upon the volume of local indebtedness must, in the interests of safety, remain a part of the system of state debt control, the imperfections of such provisions cannot be denied. Instead of constituting the principal line of defense against the abuse of the borrowing power, these regulations may better be treated as the final earthwork between local government and financial distress.

If stricter provisions were enacted governing the purpose, term

and retirement of bonds, the limitations upon the amount of indebtedness would be of less importance. It is in the improvement of such provisions that the chief problems of debt legislation now arise. An examination of the debts of most cities will disclose ample evidence of the necessity for more vigorous regulation along these lines. A brief survey of the outstanding indebtedness of the larger Ohio cities, for example, shows millions of dollars of street repair bonds, and bonds issued for such obviously current purposes as street cleaning, garbage collection and meat inspection, to cite only a few illustrations. Similarly the debt of the average city eloquently testifies to the necessity of careful regulation of the term for which bonds may be issued. Only a year or more ago a little city in southern Ohio finished paying for a bridge, constructed more than half a century ago and twice replaced during the life of the original debt. Even large cities have been guilty of purchasing motor trucks and fire equipment with twenty and sometimes thirty year bonds. But such facts are too patent to require the multiplication of examples. Another abuse which should be briefly mentioned, however, is the refunding of old indebtedness. Though now forbidden by law in a few states, this practice has not been uncommon in most parts of the country, and has contributed its share to the ever-increasing burden of public debt.

In curbing these abuses the legislative authority of the state can be made of great service, but unfortunately only a few states have thus far grappled successfully with the problem. Some have, and their legislation may well point the way for action in other commonwealths. About a decade ago Massachusetts became the pioneer in the revision of debt limit laws, since which time improved regulations have been enacted by New Jersey, Ohio and several other states. In these measures the principal emphasis has not been placed upon the amount of bonds but upon the purpose, term and manner of retiring the local debt. In the past, state legislation has normally defined the purposes for which bonds might be issued, it is true, but these provisions have not been sufficiently stringent to prevent the grossest misuse of the borrowing power. In the newer legislation, such as that of Massachusetts and New Jersey, municipalities are forbidden to issue bonds for the payment of current operating expenditures, or to borrow in anticipation of taxes, beyond the amount of the annual tax levy. Refunding is also prohibited. The Ohio law even goes so far as to forbid the refunding of bonds previously issued and to denominate all improvements, the estimated life of which is less than five years, as current expense items. Thus the use of the borrowing power to finance current operations is effectively checked.

These measures also definitely apply the principle that bonds should not be issued for a period exceeding the life of the improvement for which the debt is incurred. In New Jersey the

maximum term is fixed at forty years, while in Massachusetts and Ohio the limit is placed at thirty years. From this point the legal term is scaled down, according to the probable duration of the improvement. Thus in Ohio thirty-year bonds may be issued for the purchase of real estate, while fireproof buildings, sewers and water systems can be financed with twenty-five year bonds. The term, in the case of non-fireproof buildings, is limited to fifteen years, in the case of street improvements to ten years, and in that of motor vehicles to five years, but in no case may the life of the bonds exceed the estimated life of the improvement. An examination of the provisions of the Massachusetts and the Ohio laws might even lead one to conclude that in some instances the maximum term is considerably less than the probable duration of the improvement. But if one considers the extremely heavy total interest charge on long-term bonds and also the fact that local governments make no allowance for the depreciation of their property, it is apparent that such conservatism is highly desirable in practice.

Though the enforcement of the new debt limit legislation is usually left to the normal process, it is interesting to note that in Massachusetts, towns must submit their bonds to the state department of corporations and taxation, which examines them and certifies their legality. By this means, the state is able to check the evasion of the debt law, and the purchaser is assured of the validity of the bonds.

Along with the regulations already described, there has gone more scrupulous provision for debt retirement. In particular, the use of serial bonds has now been made mandatory in a number of states, thus eventually doing away with the well-recognized dangers of the sinking fund method of debt retirement. At the same time, more rigid requirements have been introduced as to the maintenance of existing sinking funds. In New Jersey the state commissioner of municipal accounts annually audits the requirements of each local sinking fund and certifies the amount to be levied for that purpose. In Ohio it is the duty of the county auditor to include a sufficient levy for debt purposes, in case the amount asked by the local taxing authority is inadequate.

While a small group of states now possesses satisfactory debt legislation, as much cannot be said of the majority of commonwealths. It is still very generally possible to use the borrowing power for purposes which are in reality current in character, to issue bonds excessive in term, and to refund indebtedness, if insufficient provision has been made for its retirement. Though few would advocate such rigid state control as would seriously interfere with the financing of *bona fide* public improvements, there can be little reason for allowing the gross misuse of the borrowing power, which is still possible under the laws of many states. It is of course impossible to estimate the ultimate saving to the taxpayer which would result from a more conservative debt policy, but the sum would undoubtedly run far into the millions of dollars.

Tax Limit Legislation

Though careful regulation of the local borrowing power may result in immense savings over a period of years, the taxpayer is more likely to be interested in the immediate protection which tax limitation appears to afford. To his mind the growth of the public debt is of secondary importance, as compared with the increase of the tax rate. The former burden is spread over the years, but the latter must be met at once. It is natural, therefore, that the voter should look with favor upon the limitation of the local taxing power. Especially is this apt to be true in a period such as the last few years, when prices and governmental costs rise with unusual rapidity. It is precisely at such a time, however, that restrictions upon the volume of local revenue are most likely to hamper governmental action and consequently necessitate revision. For these reasons tax limitation has recently become a subject of more than ordinary concern.

There are three basic types of tax limit legislation. The first and commonest type is that which fixes the maximum rate of levy for all or for specific purposes. Such regulations are to be found in about forty states. The second type limits the amount of taxation according to the levies of the previous year. The constitution of Oregon, for example, provides that local political divisions may not impose a tax more than six per cent in excess of the amount levied in the preceding year. Such restrictions exist in about a dozen states. The third type of provision fixes a maximum per capita limit on the volume of taxation. This type is but little used, except in the state of Minnesota, though it possesses some distinct advantages over the other forms of regulation.

Until recently there has been little controversy as to the desirability of tax limit legislation, but the extraordinary financial readjustment necessitated by the change in price level during the past decade has subjected such measures to a test not previously encountered. Probably the severest test has been had in Ohio. Not only has the tax limit legislation of that state been the most stringent, but the provisions for its enforcement have been the most effective in the country. The experience of Ohio, consequently, offers an especially good opportunity to examine the effects of statutory tax limitation. The writer has accordingly chosen that state as the basis of a study of this problem.

Under the Smith tax limit law, enacted by Ohio in 1911, the maximum rate of taxation was fixed at fifteen mills, which remained the maximum for all purposes until 1920. Within this limit the levies of the various taxing districts were determined by a county budget commission, in accordance with the budgets submitted by the districts themselves and certain additional restrictions imposed by the Smith law. Since the county budget commission possessed considerable discretion in the apportionment of

rates, the county government, as a rule, received the preference in fixing the levies, and the schools and municipalities felt the full force of the law until its relaxation in 1920.

What were the effects of tax limitation upon municipalities and school districts—the two units most directly affected by the Smith law? In the case of schools no important influence was exerted upon expenditures, in spite of the fact that revenue was seriously impaired. A comparison with other states of similar character and with the country as a whole conclusively shows that the operating expenditure per pupil in attendance, was as great in Ohio as in other states and that its increase during the decade was quite as rapid. In 1910, previous to the tax limit act, the expenditure per pupil in daily attendance amounted to $34.82 in Ohio, while the average expenditure in the six states, Illinois, Indiana, Massachusetts, Michigan, New York and Pennsylvania, was $35.10. By 1920 this expenditure had risen to $70.31 in Ohio and $64.06 in the group of states chosen for comparison. Very obviously tax limitation did not check the normal growth of expenditures for school operation in Ohio. Neither did it reduce expenditures for building purposes. A comparison indicates that the annual outlay for school construction was every bit as great in Ohio during the period of tax limitation as in other states, in proportion to school attendance. In fact, the only respects in which the school finances of Ohio differed from those of other states were in the lower revenue per pupil in attendance and the greater increase in school indebtedness. It must be frankly admitted, therefore, that tax limitation was a complete failure, in so far as school finance was concerned.

In the case of municipalities the Ohio tax limit law unquestionably did reduce expenditures. A comparison of the per capita expenditures of the leading Ohio cities with those of cities of similar size elsewhere shows that the growth of expenditures for current operation was somewhat retarded in the former. The increase of per capita tax revenue was even more markedly checked, however. In Cleveland the growth of per capita tax revenue between 1910 and 1919 was only about one-half as great as the average in other cities of its class, and in Cincinnati the increase was only a little more than one-third of that which occurred in other cities of approximately the same population.

How did the curtailment of tax revenue affect the operation of local governments? It is frequently claimed that tax limitation will compel greater efficiency and economy in the use of public funds, but it cannot be said that any such result was achieved in Ohio. It is no doubt true that the shortage of revenue made impossible some extravagances which might otherwise have occurred. But there is no evidence that administrative efficiency was gener-

ally improved or that greater results were secured from the tax dollar. Nor should such a change be expected. The mere shortage of revenue does not alter the character or ability of local officials. The normal results of the limitation of tax revenue in Ohio were increased borrowing and a curtailment of public services and of expenditures for the maintenance and repair of public property.

The most striking effect of the decade of rigid tax limitation was the immense growth of local indebtedness, for which it was directly responsible. Within three years after the adoption of the Smith law, the larger cities of the state began to run behind, in meeting their current expenditures. By 1916 practically every city and many of the school districts were faced with floating debts of serious dimensions. By the end of the decade these floating debts reached such proportions that they could no longer be carried, and funding and the modification of the tax limit law became absolutely necessary. Before the period of funding was completed, in 1922, the municipalities of Ohio issued more than $31,000,000 of deficiency bonds and school districts added nearly $9,000,000 of bonds for the same purpose. In all, somewhat more than $40,000,000 of deficiency bonds were issued by local governments in Ohio before the close of 1922. Taking the cities of the state as a whole, deficiency bonds made up more than fourteen per cent of the municipal debt, exclusive of special assessment and public utility bonds. In Cleveland they formed nineteen per cent of the debt, in Dayton twenty-four per cent and in a few smaller cities the ratio ran as high as forty per cent. Nor did this entirely end the issuance of deficiency bonds, as extensive funding of school deficits is now under way, the amount of which will run into the millions of dollars.

It must not be supposed that the millions of deficiency debt now outstanding in Ohio furnish the true measure of the borrowing which resulted from the tax limit law. There must be added several million dollars of street and bridge repair bonds, as well as many other issues, for purposes normally financed by taxation. Moreover, account must also be taken of the fact that the shortage of revenue compelled the complete abandonment of the pay-as-you-go policy in financing improvements. Where the larger cities had met more than half of the cost of school construction by taxation, in the years preceding the adoption of the Smith law, practically the entire expenditure has been covered by the issuance of bonds, in the years since its enactment. It would be futile to attempt to estimate the total indebtedness properly chargeable to tax limitation, but it may truthfully be said to exceed the actual volume of deficiency bonds, by many millions of dollars. The fact is not without significance in this connection that the increase in

the school debt of Ohio between 1910 and 1920 was practically equal to the entire outstanding school debt of any other state in the Union at the end of the decade, with the exception of New York. Neither is it unworthy of notice that fully half of the annual tax revenue of a large percentage of Ohio cities is now required for debt purposes.

In evaluating the results of the Smith law, mention should be made of the financial abuses to which it gave rise. The first of these was undoubtedly the misuse of the borrowing power. A second was the deliberate failure to make sufficient provision for the maintenance of sinking funds. In Cleveland alone the shortage in the sinking fund in 1920 amounted to more than $6,000,000, as compared with actual sinking fund reserves of practically an equal sum. In a number of the smaller cities sinking funds were virtually non-existent. In addition to the practices already cited a few striking cases of the diversion of bond funds also arose. The worst of these occurred in Toledo, where $1,900,000 of bond money were diverted to current uses in 1920, in absolute violation of the law.

In summary it may be said that the principal results of ten years of rigorous tax limitation in Ohio were:

> First, a considerable curtailment of the growth of school and municipal revenue, as compared with other populous states.
>
> Second, a partial reduction of municipal expenditures below the standard prevailing in other cities of similar size, but no corresponding restriction of the growth of school expenditures.
>
> Third, an immense increase in the public debt, more than $40,000,000 of deficiency bonds being issued, along with many millions of additional indebtedness directly chargeable to the shortage of tax revenue.
>
> Fourth, a considerable resort to improper financial practices, some of which, such as the diversion of bond money and the failure to maintain sinking funds, were definitely contrary to law.
>
> Fifth, a general failure to provide adequately for maintenance and repair of public property, especially street improvements, and in some cases an actual curtailment of municipal services.

Ohio's experience with tax limitation has been little short of disastrous. Though the law has been considerably modified since 1920, the financial condition of many communities is still precarious. Even if the existing restrictions upon the taxing power were entirely removed, it would still be many years before the results of the Smith tax limit law would be obliterated.

In view of Ohio's experience the question may well be asked, Is statutory tax limitation fundamentally sound? The writer is inclined to doubt that it is. If the purpose of such legislation is to check governmental extravagance or to increase the efficiency of local administration, it is not easy to see how its object can be achieved, without causing injustice or even serious financial difficulty in many cases. If conditions were uniform throughout a state, statutory tax limitation might perhaps accomplish its end, without inflicting hardship. But conditions are not uniform. Such being the case, it is doubtful whether such legislation can be really successful. An examination of the principal methods of statutory tax limitation will serve to indicate the difficulties.

Of the three methods of tax limitation the commonest is that which fixes the maximum rate of levy. Although provisions of this sort are to be found in most of the states, a little analysis will indicate that this device is open to important objections. In the first place, it takes no account of variations in the taxable wealth of different communities, nor of variations in the accuracy of appraisement, as between districts. Within a single state, indeed oftentimes within a single county, there are the most marked differences in per capita assessments. This fact is well illustrated by conditions in Cuyahoga County, Ohio, where Cleveland is situated. Though all appraisements are made by the same office, there is the widest diversity in per capita assessments among the municipalities of the county. A table prepared on the basis of 1921 assessments showed that a uniform levy of twenty mills would yield a per capita revenue of $43 in Cleveland, $107 in Cleveland Heights, a large suburb, and $233 and $290 in Bratenahl and Shaker Heights, two other important suburbs. At the same time it would yield but $32 and $24 in two nearby villages. Obviously no statutory limit upon the tax rate could operate with fairness in communities so dissimilar. A rate sufficiently high to permit the City of Cleveland to meet its expenditures would prove inadequate in some municipalities within the same county and yet so high as to permit the grossest extravagance in others. Nor would this difficulty be overcome by classifying municipalities according to population and establishing a separate limit for each group. Among the suburbs of Cleveland there are several which are almost equal in population, yet the differences in taxable property are so great that a uniform rate of levy in these communities would permit the most wealthy more than eight times the per capita revenue possible in the poorest. Certainly a system of tax limitation which allows such wide variations in per capita income cannot be highly commended, as a means of promoting efficiency and economy. But even if the revenue permitted were identical, there would be no assurance that the needs of the communities would be the same.

The second method of tax limitation provides that taxing districts may only levy an amount equal to the taxes imposed in the year preceding plus a fixed percentage of increase. But what percentage of increase shall be allowed? Therein lies the difficulty of the scheme. There is no formula by which the legislature may foretell the necessary or desirable rate of expansion. It must either adopt a provision so liberal as to be ineffective or run the risk of under-estimating the growth of local financial requirements. This type of regulation assumes, in the first place, that the legislature can foresee the changes which will take place in the level of prices and in the scope and standard of public service; and in the second place, it disregards all differences in the rate of population growth. It is only necessary to examine the census reports to discover the weakness of this method of tax limitation. In Ohio the City of Akron showed a growth of 202 per cent in the last decade and the City of Youngstown 67 per cent, while Dayton, a city of approximately similar size, increased its population but 30 per cent. Cleveland added 42 per cent to its population, as compared with Cincinnati which added only 10 per cent. Under such conditions how can the legislature fix the rate at which the amount of tax revenue may be increased from year to year? Had such regulation been kept on the statute books of Ohio throughout the last decade, local government would have failed completely in some of the more prosperous cities.

The third form of statutory tax limitation fixes the maximum per capita amount of taxation. In many respects this device is free from the objections that confront the preceding types of regulations. It is subject to one important criticism, however. That is the fact that the requirements of different localities are not necessarily the same. The cost of local government is affected by such factors as topography, the character of the population, the rapidity of growth and the desires of the electorate. Certainly the poverty of one city does not warrant the state in forbidding other cities of similar size to levy more than a fixed amount of taxes per capita, if the residents of the latter desire and are able to pay the cost of superior service. If a well-to-do suburb wishes to maintain a better system of schools than many other districts can afford, why should the state prevent it from doing so?

These are some of the difficulties which statutory tax limitation encounters. Two courses have been followed in trying to solve them. In a few states the legislature has empowered the state tax commission to authorize local levies in excess of the statutory limits, when conditions necessitate such action, while a much larger number of commonwealths has provided for additional levies, with the approval of the local electorate. A discussion of the former plan would lead beyond the scope of this paper, but a little may be said as to the second.

On its face it would seem that the alteration of tax limits by popular vote furnishes a satisfactory solution of the problem. It permits of differences among districts and it vests responsibility in the community itself. If a system of tax limitation is to be maintained, much can indeed be said for this type of provision. However, an examination of the operation of the referendum on tax measures may perhaps give pause to those who view this plan with enthusiasm. If the recent experience of Ohio cities may be taken as a test, there is no certainty that such provisions will overcome the dangers of rigid tax limitation. Since 1920 there have been several striking examples of financial distress, due either to the rejection of additional levies by the voters or to the refusal of officials to assume the political risks of such referenda. In 1922, Youngstown, for example, had sufficient tax revenue only for the payment of policemen and firemen, practically two-thirds of the annual operating expenditures being met with borrowed funds. Cincinnati has also been gravely hampered in the last two years because of the rejection of tax levies at the polls. In both years its revenue has fallen from two million to two and one-half million dollars below its budget requirements, thus necessitating the most rigid economy. In both Youngstown and Cincinnati the result has been a considerable curtailment of services below the standard previously maintained. A similar situation has arisen in Toledo in the current year. Tax revenue will not be sufficient to finance the usual scale of municipal operations and the city employees are being compelled to take a month's vacation without pay, because of the shortage in the city treasury. In all of these cases and in others that have arisen in smaller cities the situation could have been avoided, had increased taxing power been granted by the electorate.

Why have such conditions been permitted to develop? There appear to be two reasons, first, the unwillingness of officials to call on the voters for additional levies, until every other expedient has been exhausted, and second, the antipathy of the electorate toward propositions which openly and avowedly increase the burden of taxation. Local officials are loath to submit such questions to the voters, for they are politically explosive. Such elections bring the cost of government too clearly into the limelight to suit the comfort of public officials. Consequently, there is grave temptation to finance current operations through the abuse of the borrowing power and the accumulation of floating debts. Even when additional tax levies are sought and conditions warrant their approval, there is no certainty that the verdict of the election will be favorable. The increase of the burden of taxation is not a palatable proposition, as some Ohio cities have recently discovered, to their misfortune. If the rejection of new tax levies meant

only the restriction of public services, the results might not be financially dangerous, but all too often services are maintained through the expansion of the public debt.

As between the limitation of the borrowing power and the limitation of the taxing power, the former is much safer and more economical in the end. The local fiscal system must possess elasticity at some point, to meet the changes in financial requirements which will inevitably occur. This element of elasticity may be supplied either by taxation or by the issuance of bonds. If the taxing power is subjected to strict limitation, the pressure of increased expenditures will force an outlet through the growth of the public debt. Floating debts will arise, the pay-as-you-go policy will be discarded and every weakness of the debt limit laws will be exploited to the full. Unfortunately public opinion is not a sufficient check upon the abuse of the borrowing power, as that affects the future rather than the immediate present. On the other hand, public opinion may be trusted to make itself heard, when the taxing power is materially abused, for that is felt at once. It is the taxpayers of the future who most need the protection of statutory limitations. Those of the present have other means of redress.

Dr. T. W. Page presiding.

Chairman Page: The next paper on our program will deal with the central supervision of local expenditures. Mr. Philip Zoercher, member of the Indiana State Board of Tax Commissioners.

CENTRAL SUPERVISION OF LOCAL EXPENDITURES

PHILIP ZOERCHER
Member State Board of Tax Commissioners of Indiana

Different remedies have been applied in controlling public expenditures. Some advocate the fixing of a limit to the tax rate; others favor the idea of limiting the expenses to the amount spent the previous year, plus a small percent of increase for the current year, and still others favor the plan of controlling local expenditures by means of the budget system and giving the taxpayers a right of appeal from all bond issues and tax levies to a centralized board, freed from local influences.

The experience of Ohio in dealing with a fixed limit to the tax rate is sufficient to cause every student of taxation to doubt the efficacy of that as a proper remedy to control public expenditures. Limiting the expenditures to the previous year, plus a certain percent of increase, has some merit, which can be better explained by the taxing officers of New Mexico and Florida.

The plan that presents a system flexible enough to provide sufficient revenue for all departments of government and yet insure proper control thereof is that now in force in the State of Indiana.

Governor Silzer in his first annual message to the legislature of New Jersey, has well said:

> "Experience shows us that the spending agencies will not check themselves, and that mere laws attempting this are circumvented. So long as municipal and other officials will spend we must pay. This is the root of the evil. Since they will not check themselves, we must do something to check them. In searching for a remedy, we must always have in mind the elemental principle, i. e., that if we would reduce taxes we must keep down expenditures."

The statement that "spending agencies will not check themselves" was fully demonstrated in the year 1920 in the State of Indiana. The new tax law of 1919 became effective March 11, 1919, and during the first year all bond issues and tax levies were under direct control of the State Board of Tax Commissioners. Property valuations were increased from $2,233,761,065 to $5,749,258,800. The total taxes in the state for all purposes were increased from $68,367,035, the last year of the old law, to $75,602,477 the first year under the new law. The State Board, on account of its powers over tax levies, reduced levies amounting to $11,617,037 in taxes. The legislature was convened in special session in July, 1920, and the power over bond issues and tax levies was taken from the state tax board, as a result of false propaganda against the law, by contractors, money-spenders, and others.

The tax levies in 1920 were fixed by local officers, with the check removed, and taxes increased in one year $36,000,000. This cost of "home rule" was so vividly impressed upon the taxpayers that the legislature of 1921 promptly amended the law and gave the state tax board authority over bond issues in excess of $5,000 and over all tax levies, on petition of ten or more taxpayers.

The section in reference to tax levies provides that the proper legal officers shall prepare a budget and set out in detail what is contemplated to be spent the coming year and that ten days' notice, by publication of such budget, shall be given. The taxpayers are invited to be present and may be heard on such budget and contemplated levy. The taxpayer is thus given due notice what amount is asked and the purpose for which the money is to be used.

The Supreme Court of Idaho, in deciding the Graves *v.* Berry case, held that the officers are limited to the amount set out in the budget and for the purposes therein designated. If it were permitted to divert the amounts set out in the budget for other purposes than those designated, it would be an easy matter for the

officers to set up items that would meet public approval and later divert these for purposes that would not meet public approval. Such action would defeat the very purpose of the budget law and it is refreshing to see how clearly the Supreme Court of Idaho pointed out that the taxing officers cannot divert funds in that way.

Every department of government, when its budget is fixed and the tax levy determined, must prepare to do its business within the amounts set up in the budget. The budget is the yardstick, beyond which the official cannot go. It is surprising how many departments will serve the public and live within the amounts designated. It will encourage economy on the part of every official when their slogan is "Live within the budget". Amended Section 200 of the Indiana Tax Law contains the provision concerning the budget and tax levies.

The form of the budget also sets out the amounts spent the three preceding years and balances on hand, so that the taxpayers know whether the tax burdens are increasing or decreasing, or if the officers are endeavoring to build up unwarranted large balances.

In September, 1923, an appeal was taken by taxpayers in Carroll County. When the budget was published it showed that the county officials were asking an increase of four cents in the county levy. When the taxpayers appeared before the county council, at the time the levy was fixed, they were ignored and no consideration shown them. At the hearing on the appeal before the state tax board, it was shown that the county had on January 1, 1923, a balance in the general fund of $192,000, with a budget of only $80,000. As a result of the hearing the entire county levy was wiped out for the year. The budget form only calls for a working balance to run the county six months but does not contemplate such large balances as was shown in that case.

If objection is made to any budget item or to the amount in the budget and the local officers at such hearing do not give proper heed to the demands of the taxpayer, the taxpayers, ten or more, may file a petition with the county auditor on or before the fourth Monday of September, and demand that the budget and tax rate be reviewed by the state tax board. A hearing is then held by the state tax board in the county where the taxing unit is located and after such hearing it has authority to approve or reduce the tax levy—no increase can be made by the state tax board. The board's action on such levy is final.

The hearings are informal. The taxpayers are not required to employ attorneys to represent them at the hearing. There is no objection when attorneys are employed, but the idea is that the taxpayers should feel free to take the appeal and not be compelled to incur the burden of paying attorney fees, when an honest attempt is made to reduce the tax burdens. All that is required of the tax-

payers is that they appear at the hearing and in their own way give the reasons for objecting to the proposed tax levy or bond issue as the case may be.

No costs attach to any of these hearings. The law does not provide for witness fees, hence no costs can be taxed against the taxpayers in taking any of these appeals. The jurisdiction of the state tax board is limited to approving or reducing tax levies and to approving, reducing, or denying bond issues. In no instance can there be any increase in tax levies or bond issues as a result of any appeal.

In 1921 the state board reviewed tax levies in forty-two taxing units and made reductions in thirty-nine taxing units—the reduction amounting to $1,254,448.

In 1922 the tax levies in seventy-four taxing units were reviewed by the tax board and reductions made in forty-six taxing units, amounting to $1,034,572.

In 1923 the tax levies in thirty-seven taxing units were reviewed and reductions were made in twenty-five taxing units, amounting to $1,874,070.

There are more than two thousand taxing units in the State of Indiana and it can be seen from the foregoing that all the taxpayers have not availed themselves of the right given by the law. A state taxpayers' association has been recently organized and has created a very healthy sentiment in favor of taking advantage of all the rights afforded by the law to keep expenditures within proper bounds.

The Supreme Court of Idaho, in the case of Graves *v.* Berry, 207 Pacific Reporter 718 (720), says:

> "The legislature must have had some purpose in view in requiring an estimate of the expenses to be published for four weeks. Obviously it was to enable the inhabitants and taxpayers of the municipality to become informed as to the purpose for which and the amounts which it was proposed should be levied against their property by the process of taxation. The appropriation bill was intended to limit the expenditures for the fiscal year, except in certain cases of casualty or accident."

If the remedy would only apply to tax levies the problem would only be partially solved. Amended Section 201 of the Indiana Tax Law refers to bond issues and provides that whenever the proper officers of any municipal corporation contemplate the issuing of any bonds or other evidences of indebtedness, in amounts in excess of $5,000, two weeks' notice of such determination must be given the taxpayers. Such notice must show what the money is to be used for and the assessed valuation of the municipal corporation and its total indebtedness. The notice also contains the informa-

ion that ten or more taxpayers, other than those who pay poll tax only, who feel themselves aggrieved by such determination may appeal to the State Board of Tax Commissioners for further action, by filing a petition therefor with the county auditor, setting out that such contemplated improvement is unnecessary, unwise, or that the cost thereof is excessive.

Under the law as passed in 1919, all bond issues had to be submitted to the state tax board. This power conferred upon the state board was questioned in the courts. The Supreme Court of Indiana, in the case of *Van Hess* v. *Board,* 190 Indiana 347 (354), (129 N. E. 305, 307), held:

> "Questions of the expediency of improving this particular six miles and a half of highway, at an expense of $30,000 per mile, and paying for it out of the taxes to be collected in a certain number of years, instead of using those taxes to improve or to maintain some part of the other hundreds of miles of highway in the county, or to pay for school houses, or bridges, or a courthouse or jail, or something else for public use, and, instead of collecting a less amount of taxes, must be decided by somebody. For there is a necessary limit to the amount of taxes that can be collected in any one year, and a limit to the amount of taxes that ought to be levied, even though it might be possible to collect them. And whatever part of such taxes are used to pay for this highway cannot be used for other public purposes, nor can the people use for private purposes what they are compelled to pay as taxes. * * *
>
> "Which of the different possible improvements that would be of public utility shall have the preference, or whether any of them shall be undertaken at a given time, are not judicial questions, but are such questions as may be referred to a public board charged with duties in the assessment of property and levy of taxes. The fact that the state board of tax commissioners does not possess judicial powers is not a reason why it could not be empowered to decide that question. Boards having to do with the levying of taxes and the expenditure of money raised by taxation must always exercise a discretion as to the general purpose for which each tax should be levied and the amount to be levied for each of such purposes, and as to the nature and amount of each specific expenditure from any general fund."

This opinion was given concerning the law as passed in 1919 and before the amendment of 1921 was adopted. Since the amendment of 1921 the state tax board has nothing to do with any bond issues, except when ten or more taxpayers file their petition, asking the state board to pass on any bond issue. This removes the objection made in 1919 of a centralized board interfering in local matters.

It is only when the local taxpayers themselves have some differences as to the wisdom of spending the money proposed by the bond issue and ten or more of the taxpayers file a petition, that the state tax board acquires jurisdiction.

Judging from its duties and powers the state tax board is a proper board to consider questions of tax levies and bond issues.

The State Board of Tax Commissioners is composed of three commissioners, appointed by the governor, each for a term of four years, not more than two of whom shall belong to the same political party. The board, with the advice and consent of the governor, has power to employ such counsel, engineers, examiners, experts, clerks, accountants, and other assistants as it may deem necessary.

This board has original jurisdiction in assessing all railroads, both steam and electric, telegraph and telephone lines, pipe lines, express companies, sleeping-car companies, all public utilities, banks and trust companies, and building and loan associations. It has charge of the inheritance tax department. It has authority to equalize assessments between counties of the state. It has a right, on its own initiative, to certify for review and reassessment any assessment in the state. Taxpayers have a right to appeal to this board from the action of the local board of review. The law requires that the members of the board devote all their time to the duties of the office.

Bonds Approved and Disapproved, March 11, 1919, to December 31, 1920

	Approved	*Disapproved*
County unit roads	$5,186,750	$2,235,664
County buildings and bridges	5,292,993	807,600
Township roads	21,249,993	2,598,562
Township schools	5,272,776	1,863,553
Civil cities and towns	8,826,715	948,138
School cities and towns	12,741,044	739,500
	$58,570,271	$9,193,017

Bonds Approved and Disapproved, March 10, 1921, to and Including September 10, 1924

	Approved	*Disapproved*
County unit roads	$4,859,346	$3,675,029
County buildings and bridges	214,320	128,000
Township roads	4,769,437	6,218,956
Township schools	6,111,878	2,910,393
School cities and towns	5,919,437	1,288,400
Civil cities and towns	1,891,000	356,500
	$23,765,418	$14,577,278

The fact that a bond issue may be appealed to the state board has in itself tended to keep down the prices in many cases. There

have been many instances where it seemed that contractors have gone on the theory that it was perfectly proper to prey on the public and "get while the getting was good."

There was one case where it was proposed to issue bonds in the sum of $570,000 for the building of the Lima Road, in Allen County. A petition was filed with the county auditor asking that the same be reviewed by the state tax board. After the petition had been filed the contractor voluntarily appeared before the board of county commissioners and asked that the amount be reduced $131,000. After a full hearing by the state board, the bond issue was disapproved. The county commissioners advertised for new bids and re-let the contract for $201,000 less. The original contractor filed suit, enjoining the commissioners from re-letting the contract. It was the contention of the tax board that the contract was not a completed contract, until the bonds were approved, or the time for taking the appeal had elapsed. The local court sustained the position of the tax board and the contractor appealed the case to the Supreme Court of Indiana and that court affirmed the decision of the lower court.

We take the following from the opinion of the Supreme Court:

> "The court holds that the alleged agreement entered into between appellants and appellees March 29, 1921, was tentative only, and contingent upon the action of the board of tax commissioners upon the petition objecting to the issue of bonds, and, such board having granted the petition and disapproved the issue of the bonds, that such agreement did not ripen into a consummated contract. It follows that the provisions of section 201 of the Tax Act as amended became a part of the tentative agreement entered into by the appellants and appellees on the 29th day of March, 1921, as though written therein at full length. Therefore the alleged contract in question was not a binding, valid contract which appellants could enforce, notwithstanding provisions of section 201 of the Tax Act as amended, and that the action of the board of commissioners in April, 1921, pretending to cancel said agreement, was of no force or effect, for the reason that the action of the state board of tax commissioners in disapproving the bond issue was as complete a rescission of the unconsummated contract as though the contract itself had had written therein a provision that it was subject to the action of the state board of tax commissioners, if invoked according to law, and void, and of no force and effect, provided such tax commissioners disapproved the proposed issue of bonds determined upon by the board of commissioners. The parties to the agreement were not legally competent to enter into a binding contract except in compliance with amended section 201 of the act concerning taxation." — *O'Connor* v. *Board,* 142 N. E. 858 (861).

Another instance was in the building of the White and Fromme Roads, in the city of Terre Haute, Vigo County, Indiana. The first hearing on the petition of the taxpayers against the bond issue was held in November, 1922. At the hearing it was shown that the taxpayers originally petitioned for an eight-inch slab cement road, to be built according to state highway approved specifications. It was shown at the first hearing that after the roads were approved by the board of county commissioners the brick interests took the county commissioners, viewers, and county engineer on a junketing trip to Kansas City, Missouri, and when the report of the viewers was filed, the specifications were changed from an eight-inch slab concrete road to a brick road. Evidence further showed that this would increase the cost of the road from fifteen to eighteen thousand dollars per mile. The bonds were disapproved by the tax board and thereafter the board of county commissioners had made another entry to issue bonds and again a petition was filed by the taxpayers, asking that the same be reviewed by the state board, and another hearing was held, with a second disapproval. Every effort known to man was made by the contractor to control the action of the board. The Terre Haute Chamber of Commerce, Kiwanis Club, Rotary Club, the Banks of the Wabash Club—all adopted resolutions favoring the bond issue, and political pressure was exerted, but without avail. It came up a third time and it was again denied. Thereafter, the specifications were changed to comply with the original petition filed by the taxpayers and the contract was let about two months ago for $65,500 less, and since that time the contractor himself admitted that the board was right in its action, but as long as there was an opportunity to approve the first contract the tax board was all wrong. These two roads were each two miles long.

In Newton County a bond issue was appealed to the state board, providing for the building of three gravel roads. Information secured by the board was that the price was entirely too high. The roads were merely ordinary gravel roads. The bonds were disapproved. The matter was brought up a second time and disapproved again. The county auditor was notified that the tax board would disapprove it as often as it came before it, until the board of county commissioners would re-advertise and receive new bids; the tax board felt certain that the price was too high. This, of course, was before the decision of the Supreme Court in the O'Connor case and the contractors had not yet been convinced that when the bonds were disapproved, that terminated their contract. In that county the commissioners advertised for new bids and the contract was let for $32,099 less, on three small gravel roads.

In October, 1923, the school district of Indianapolis determined

to issue bonds in the sum of $1,650,000 for the building of eight new school buildings. Ten or more taxpayers filed their petition, asking for a review by the state tax board. A public hearing was had and the state tax board found that there was a necessity for the new school buildings and entered a preliminary finding that the school district should adopt proper plans and specifications, advertise for and receive bids, and that if proper bids were received, bonds would be approved. The school district accepted the aid of the engineer of the state tax board and plans were prepared and in proper time bids were received. The contractors knew that proper bids must be filed; that all bids would be carefully scrutinized, and when this was done it was found that bids for the eight new buildings, all complete, were for $436,000 less than the total amount asked for. Nothing like that had occurred in the City of Indianapolis for many years. The buildings have since been completed and are a credit to the city.

Many other cases of similar import might be given. Taxpayers in almost every county in the state have learned that the right given them under the law to appeal from local tax levies and bond issues has been a material aid in keeping down expenses and stopping the reckless expenditure of money. The question of taxation will never be solved until the taxpayers have some voice in controlling expenditures and some effective methods in putting it in force.

Candidates for office are very liberal in making promises that they will reduce taxes, if elected to office. No sooner do they get into office, when it is quite convenient to forget the promises made, and it is easier to yield to the demands of those who are always ready to urge improvements, whether needed or not.

Many unjust charges have been made against the Indiana Tax Law but in the final analysis it has stood the test and will continue to grow more popular with the people as they become better acquainted with its provisions. Honorable Thomas R. Marshall, in his last message as Governor of Indiana in 1913, suggested the idea of having all bond issues submitted to the State Board of Tax Commissioners.

Local taxes are always the greatest part of the taxes paid, and with the taxpayers' right of appeal on bond issues and tax levies, a wide-awake citizenship can practically control its local taxes by the provisions now embodied in the Indiana Tax Law.

CHAIRMAN PAGE: I am sorry to say that the next paper which is on our program will not be given, for the reason that Mr. Beall, who was to have presented it, was prevened from attending the meeting by illness in his family. We shall, instead of that, have the pleasure of hearing a paper on centralized financial super-

vision, to be presented by Mr. Clyde J. Crobaugh, Assistant Professor of Political Economy, University of Indiana.

Professor Clyde J. Crobaugh (of Indiana): Mr. Chairman, ladies and gentlemen: I am very glad that Mr. Holcomb has removed me from the Friday program and put me on the program this evening. The reason for this is that this morning Dean Loeb stole about one-fifth of my thunder, and just now my fellow-citizen from Indiana stole about three-fifths of it, and in another day or two I would not have had much left.

CENTRALIZING FISCAL TENDENCIES IN STATE AND LOCAL RELATIONS

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Historically speaking, there are two outstanding developments in state and local finance. The first has been the attempt on the part of students and practical administrators to find various substitutes and reform programs for the good old-fashioned general property tax. This aspect of the movement is characterized by the programs for separation of state and local revenues, for the classified property tax, and for the state income tax. The second leading development has been the struggle to bring fiscal matters under a more centralized control. This growth has resulted in a conflict between the believers in home rule and the advocates of centralization. Viewed a little more concretely, the situation may be summed up in these words: first, there have been struggles to secure better taxation; second, there have been attempts to obtain an improved type of fiscal administration.

Centralization is a phase of the problem of fiscal administration. Fiscal administration, according to Hugh Dalton, in his recent work on *Public Finance,* "belongs to the stage of realistic study in public finance rather than to that of general principles." There are those, of course, who may feel inclined to disagree with Dalton on this point. Be that as it may, it does seem quite true that fiscal administration touches the public more closely than theory and principles. Moreover, it has been demonstrated that a tax, although sound in principle, will fall short of full accomplishment when the machinery provided for its administration is crude, inadequate, or corrupt.

The historical development of the centralizing tendencies in the fiscal relations of state and local governments is a rather interesting story. Time and space permit only a brief and fragmentary statement of the historical aspect of the problem. The term "administrative decentralization" can be used to clearly express the

leading characteristic of that period of the fiscal history of the relations between the state and local governments prior to 1890. At that time there were hundreds of local units of governments, each a law unto itself. In some states, it is true, attempts at centralization were made prior to 1890. But even in these instances, it is safe to say that centralization was in name only, and decentralization was the practice. So strong was the sentiment of the time for decentralization that the states were powerless. "In Indiana, in 1841, a State Board of Equalization was abolished, as having the kingly power of augmenting the people's taxes at will and being an iron-hearted monster and deadly foe to civil liberty."

Now the centralizing tendencies which will manifest themselves in state and local relations involve the placing in the hand of the state government the jurisdiction over matters which might be under the sole management of local authorities. The purpose of this paper is to describe and consider the centralizing movement taking place in state and local relations.

Unquestionably centralization is one of the major tax reform movements of recent times. Aside from its manifestation in the tax commission, this movement has seldom received critical attention. In order to relate this administrative reform to the tax reform movement, three general forms of centralizing tendencies will be discussed: first, centralization which arises in connection with the general property tax; second, centralization which is related to the administration of special taxes; third, a brief mention of special fiscal forms of centralization. Attention may now be directed in more detail to these three types of centralizing tendencies.

One of the important forms of centralization developing in connection with the general property tax has been the tendency to take away powers which formerly belonged to local officials. Perhaps the best illustration of this tendency is to be found in the assessment and equalization of the property of public utilities. The first serious movement to bring about centralization in state and local relations is to be observed in placing the primary or original assessment of public service corporations in the hands of central authorities. It was very early in the history of these corporations that it was discovered to be utterly impracticable to assign to numerous untrained persons the valuation of parts of a railroad, a telephone system, a telegraph line, situated in the different counties through which these companies operated. Soon it became the policy to assess the property of public utilities by central authorities. Very gradually the power once exercised by the local assessor was taken away from him and placed under absolute control of central bodies, so that today the situation with reference to the assessment of public utilities may be summed up briefly

thus: the primary assessment of many public utilities is made in about twenty-eight states by state tax commissioners, in ten by state boards of equalization, in two states by state comptrollers, in two states by railroad and public utilities commissions, in one state by the commissioner of revenue, in one state by the state corporation commission, and in one state by the board of state assessors.

Generally wherever this type of centralization has taken place it has been an improvement over the old piece-meal assessment of public utilities. No state, so far as written evidence is available, which has adopted this type of centralization is ready and willing to return to the good old days of the unreformed and disconnected system of the general property tax. However, the results of this centralization are far from being satisfactory. The development of this efficient process for the centralized assessment of the public service corporations has produced in many cases not equality but troublesome inequality, because of the fact that equally effective methods of valuation have not been applied to all the taxable property of other taxpayers in the state. So that while centralization has undoubtedly brought improved and more efficient assessment, it has also brought with it the possible danger that the property of public utilities will be liable to higher assessments and be more accurately appraised than other property in general. Practically then, centralization has come to mean a higher effective rate of taxation for public utilities. Two problems of considerable importance arise in connection with this central assessment of the property of public service corporations. First, assuming that the property of public service corporations should be taxed at an equal rate with other properties, the problem of equalization becomes one of considerable importance to the public utilities. The second difficult problem arising in connection with this central assessment of public utilities is the apportionment of the intangibles, interstate and intrastate. There seems to be no immediate solution for either of the difficulties at the present time, except comity arrangements and compromises.

While the assessment of the property of public utilities is unquestionably the best example of the centralizing tendency of the state to take away power from the local assessors, in some states the same tendency is exhibited in the assessment of other types of property. In a few states the central authority makes the original and primary assessment of such property as iron ore mines, coal mines, forests, oil wells, copper mines, etc. Centralization very readily supplies in these cases the desirable special expert knowledge necessary for the proper valuation of these particular classes of property. No one local assessor, or even many such assessors, can have the knowledge required for making correct valuations

of all such complex varieties of wealth as exist in our present economic communities. Only centralized assessment can supply the prerequisite scientific knowledge necessary to properly assess mines, timber lands, oil wells, etc. So long as the states continue to raise a part of their revenue by imposing taxes on mines, forests, oil wells, etc., it is advisable that such taxes be centrally assessed. An unbiased study of the conditions preceding the establishment of such an authority in the states now employing this centralization, and of the work accomplished since, justifies one in favoring the continuation and further development of this type of central authority.

A second type of centralizing tendency connected with the administration of the general property tax is embodied in the development of central control and supervision over what may be termed the jurisdiction of the local officials. The best example of this particular form of centralization is the central supervision and direction of the assessment of the real and personal property remaining in the hands of local assessors. In general, the purpose of this centralization has been to get a more equitable determination of the basis for direct state and local taxes. It is very difficult to describe adequately all of these powers of supervision due to amount of detail involved. From the experience and practice of the states using this type of centralized control it will be noticed that such powers range all the way from giving the local assessor a good scolding, to reviewing and equalizing the original returns, and even to reassessment in some cases, and the making of individual assessments in a few instances.

A considerable amount of opposition has developed against this particular form of centralization. It is often called an undemocratic usurpation of power. The average man seems to have a sort of fear and distrust of central bodies acting in this capacity. In some quarters, intersectional distrust and animosity has led to a fear that the central body will discriminate against one section and in favor of another. Moreover, the claim is made that the central bodies always lack sufficient knowledge of the local conditions which surround the individual taxpayer, and hence are unable to remove the inequalities in local assessments. In some places the fear exists, and it is also a belief, that the central authorities are primarily responsible for increasing the tax burden.

Another objection to this type of centralization arises on the ground of political tradition and sentiment. Centralization is considered a departure from the principles of democratic government and a violation of the right of local self-government. Says Professor Lutz, "There is everywhere in the United States a natural and logical preference for local autonomy, and a varying degree of administrative authority." To have a central body in existence,

with power to overthrow the assessments of locally elected officials appears to many to be un-American and oppressive. In passing, it must be said that the corrections and adjustments of the local assessor's returns are in no sense an infringement of the principles of local self-government. The local assessor has had a chance, in the first instance, to make a proper assessment, and it is only when he fails, that the central authority steps in to review his original assessment. In executing such duties, in connection with the assessment of property, the state government is undertaking no more drastic action in tax administration than it has already used in many other fields of social and economic endeavor. Unquestionably such centralization is expedient and advisable, if it is for the best interest of the people as a whole. The entire state is concerned about the assessment of individual property, for the valuation of property in local taxing communities is a matter of general as well as local interest. For it must be noted that valuation is a criterion or gauge, not only of what property in that individual locality shall pay in taxes, but also is a factor in helping to decide what property in other localities shall pay. The local assessor should be subordinated to the state central authority in the accomplishment of his services, even if he is selected locally, for he is a representative of the state. Unless the central taxing body is to possess drastic and far-reaching powers it is almost useless to create such an agency.

It is hardly possible to make any valid sweeping generalization as to the actual results of this type of centralized financial supervision. It is very difficult at the present time, especially when this movement toward centralization is only partially developed in many states, to attempt any satisfactory evaluation. The evidence at hand is almost entirely partial and consists more of opinion than of concrete proof, in any special form. It would be too rash a statement to say that the results of this special form of centralization in all the states where it has been tried, approaches anywhere near the ideal. Some general observations, however, may be offered upon the tendency to supervise the process of local assessment.

First, if the local assessment was well accomplished before the state supervision was exercised, local initiative was not weakened by this central direction and control but was strengthened and maintained. The chief result of this rigorous control by the central authority has been to establish and keep in all the taxing communities the highest standards which were to be found in the best of them, before this centralized control was exercised.

Second, notwithstanding the difficulties and handicaps encountered in many of the states in the supervision of local assessments, the situation has been much improved through state-wide super-

vision. The proposition cannot be successfully denied that there is a much greater relative equality in assessments, than was the case before central supervision was undertaken, where this supervision has in any way been effective.

A third accomplishment of centralized financial supervision has been an improvement in the methods of local assessment. Prior to the creation of this type of centralization the local assessors were assessing property in haphazard and unsystematic ways. In all of the states there were local taxing bodies with varying ideals of value, with varying systems, and with different interpretations of the law and some with no ideal or method. Indeed, most of the local assessment systems were well calculated to insure haphazard assessment. The result of supervision has been the standardization of these varying and different conceptions. Furthermore, the coming of this centralized directing power has brought with it a greater appreciation for improved technique and more scientific methods of assessment, as contrasted with the old hit-or-miss personal judgment valuation. Then, too, the central authority has constantly been a stimulus to the local assessor to be more careful and efficient. By giving well-formed and comprehensive instructions to the local assessors the central body has often been able to prevent unequal assessments. Another feature which has been a valuable aspect of this centralized directive power, has been the annual conferences held between the central bodies and the local assessors. There is no question concerning the value of intimate contact between central officials and local assessors. A knowledge of local conditions and problems obtained through these conferences assists the central directive authority to be more capable, while at the same time the central authority, by teaching and explanation, encourages and stimulates the local assessor to be more effective. The Minnesota Tax Commission report has stated, "We feel that the generally satisfactory cooperation the commission has received from assessors is largely due to the annual meetings that are held between representatives of the commission and assessors." [1]

Although there has been considerable improvement through the centralized supervision and control, nevertheless there are a number of shortcomings which have resulted in a failure to accomplish the greatest possible benefit. A brief summary of the shortcomings of centralized financial supervision may be briefly considered at this point in the discussion. First, in many cases all the members of the entire central body have been appointed for very short terms and frequently all have been removed on account of political changes. Such a condition in the central body makes it

[1] Minnesota Tax Commission Report, 1922, p. 75.

impossible to secure the necessary continuity of service and familiarity with complex tax conditions, all of which is essential to make intelligent supervision of local assessors a possibility. Frequent changes in the personnel, through political pressure, have been one of the reasons for the failure of central bodies to exercise their full and proper powers of supervision and direction. Second, the ex-officio board, or the presence of ex-officio members on these central tax boards, has greatly handicapped effective centralized financial supervision. It certainly is a great weakness to any central body to have a number of its members, whose time and chief interests are naturally devoted to other matters. It is hardly possible with such central boards to obtain anything like a desirable form of central supervision. No forward-looking progressive state which undertakes to exercise a central supervisory authority can accomplish the best results through a board of ex-officio members. A third obstacle to competent central supervision has been the inadequate powers granted to the central body. In many instances the central authority does not have the proper powers to secure the necessary and intelligent supervision that is desirable. Satisfactory results cannot be expected, so long as central tax authorities do not have the power to make supervision possible.

A fourth weakness of centralized bodies has been the lack of ample funds to secure the necessary advice for an intelligent supervision. Some of our state legislatures have interpreted the recent cry for economy in expenditures to be synonymous with a penurious policy of appropriation toward state tax commissions. This fact must be borne in mind, in making any judgment as to the effectiveness of a central body, in supervising local assessments.

A fifth drawback to adequate supervision is the insufficient remuneration which is given to the members of central tax bodies. In many cases the salaries have not been high enough to attract high-grade men, with adequate training, which is so essential to the proper performance of this difficult supervision.

Even in those cases where the central body has been most satisfactory in its composition, there still exists a further weakness, namely, the local assessment system. Only in rare instances has the central authority been able to make a complete reassessment. Consequently, when the local assessor makes a valuation of a piece of property, his valuation is final in most instances. The initial assessment is naturally one of the most important aspects of the whole system of property taxation. So when the local assessment is made and is completely unsatisfactory, it is beyond human power for a central body, through supervision, to correct all the evils which are inherent in a backward local assessment machinery.

This condition exists where the local assessor has been subject to personal, local, and political pressure and favoritism. This condition prevails also where the local assessor has had no particular ability or training for the appraisal of property. It is often the case that the local assessor also functions as an independent unit. Furthermore, in many instances he has been a part-time employee with low *per diem* pay.

A step toward the improvement of this condition would be the appointment by the central authority of the county and local assessors. The office of assessor has no necessary relation to politics and it would be a marked improvement if it could be separated from political influence. The intelligent people in every state should work to put the county assessor under the merit system. Of course, this reform cannot be carried out immediately, and perhaps not for some time to come. Public sentiment in most of the states is unwilling to abolish the system of the elected assessor and establish central appointment of all assessors and thus the complete central administration of all assessments in the state. This state of mind illustrates very clearly the contrast between what may be called the science of government and the human side of government.

A third type of centralizing tendency connected with the general property tax has been in the direction of the exercise of disciplinary powers. The best illustration of this is the right sometimes given to the central tax authority to remove or institute proceedings for the removal of any local assessor, for failure in the performance of his duty. Where this power of removal is subject to the condition of reference to courts for settlement, the power to discipline is greatly weakened. The central authority should not be so restricted in the exercise of this disciplinary power over the local assessors. Only in a few states does the central authority have this power to remove local assessors.

Considerable opposition has arisen to this form of centralization. A certain amount of this opposition comes as a result of the vested interests of the local official. Every local assessor usually constitutes a member of a fighting force, to prevent the enactment into law of any right of a central authority to remove him from his office. This attitude, of course, is natural and must not be attributed in any way to sinister or dishonest motives. Another ground for opposition to this centralizing tendency to discipline, has been the claim that the usurpation of such powers by a central authority is unconstitutional. This objection does not consider the question of whether or not such centralization is expedient or wise. It is an objection only on the grounds of legal technicalities. Simply to plead that this type of centralization is unconstitutional is hardly a sufficient justification for attempting to arrest the tendency in that direction.

So far as the result of this power to remove the local assessor is concerned, the claim is often made that such power is seldom exercised, when it is possessed. The question is frequently raised, what central authority has ever removed a local assessor from office? This inquiry is often beside the point. The mere possession of the power of removal is an excellent guarantee against the necessity for the frequent use of this power. The mere fact that the central authority possesses the power of removal is quite often a stimulus to the local assessor to be careful and conscientious in the performance of his work. The wise central authority will, of course, always seek to establish a friendly relationship with the local assessor, based on common understanding and purpose, rather than upon force. The tendency to grant these disciplinary powers over local assessors to the central bodies is a step in the right direction and needs to be encouraged.

The next consideration of centralizing tendencies in state and local relations is best illustrated in the administration of certain special taxes. Three examples may be cited, to point out the nature and characteristics of this tendency. First, in the case of the inheritance taxes, the most satisfactory results are to be found in those states where the machinery is highly centralized. At the present time this tax is administered in eighteen states by state tax commissions, in nine states by local courts, in six states by state treasurers, in five states by state auditors, in one state by the board of equalization, in one state by a comptroller, and in one state by the insurance commissioner.

Second, in recent years a number of states — about one-third now—are using state income taxes. Here again the tendency is to place the administration of these taxes immediately in the hands of central bodies. At the present time this tax is administered in seven states by the state tax commission, in three states by state auditors, in one state by the state comptroller, in one state by the state school tax department, in one state by the state board of equalization, in one state by the state department of revenue, in one state by the department of finance and taxation, and in one state by the county treasurer. Under the purely local system of administration, the state income tax was a failure, but with central control of the process of assessment, a large measure of success has been achieved by the states using state income taxes. This tax, with centralized administration, is now looked upon as the next important step in reform in many of our states.

Third, in the case of the recent development of the gasoline tax, the tendency has been clearly manifested of putting the administration of this tax in the hands of central authorities. Thus, in eight states the law is administered by state tax commissions, in eight states by state auditors, in six states by the secretaries of

state, in five states by the state comptroller, in two states by the state treasurer, in two states by the commissioners of motor vehicles, in one state by the state oil inspector, in one state by the supervisor of public accounts, in one state by the commissioner of law enforcement, and in one state by the state board of equalization and the treasurer.

It is a singular fact that as new taxes are discovered — some people think too many have already been discovered—they are immediately placed under central control and no longer assigned to local management. This, indeed, is a significant change from the historical development of the general property tax. The initial step is centralization; the final move is concentration of control.

One of the great faults of the so-called centralized administration of these special taxes is that too many independent departments and officials in our states are concerned with the assessment and collections of these special taxes. This is true as indicated above, in connection with inheritance, income, and gasoline taxes. To make a list of the many independent offices, departments, boards, and commissions which administer these three taxes in the various states, seems to impress one, upon superficial glance, with the decentralization rather than the centralization of the administration of these taxes. There is a total lack of unity in the financial administration of these three sources of revenue. Consequently there is much duplication of effort in the process of assessing, levying, collecting, managing, and disbursing the revenues from these taxes. In addition to seriously complicating the procedure, this condition results in an extra amount of work being done and makes it possible for these taxes to be more easily evaded. The difficulty that exists is one of "split" centralization rather than concentrated centralization. The fact is that in the various states the administration of these special taxes is scattered around among various departments. Such a divided system of centralization has a tendency to lead to irresponsibility. Logically, these three different taxes, and others which might be mentioned, should be concentrated in the hands of one central body. It would not be an impossible task to modify the law and procedure in most of our states so as to give one central organization the powers and duties for the essential control of all these special taxes.

There is one interesting and valuable possibility connected with such a further development of centralization. It seems quite reasonable that the central bodies are the logical agencies to assemble the significant facts about taxation in the various states. If the administration of these special taxes which have been considered above is concentrated in the hands of one central authority, rather than scattered among numerous state departments, would it not facilitate the collection of tax statistics? There is a great need

at the present time for adequate, accurate, and intelligent facts relative to our state and local systems of taxation. What is needed today, in order to have sufficient knowledge to correct and to improve our tax systems are adequate tax reports. These should contain detailed facts, explanations, constructive criticisms, and statistical summaries. If the measure of centralization here suggested can in any way assist in the improvement of our tax information, it will be a movement in the direction of progress. Students of tax problems will be better able to grapple with the difficulties of the situation when the information is available. No thoroughgoing tax reform is possible without adequate tax facts, which at present do not exist.

One argument which is frequently advanced against this tendency to concentrate is that there are dangers which come from an excessive bureaucratic centralization. It is claimed that the conferring of authority on the central body means the granting of powers which are too extensive. In this way the volume of duties imposed upon the central authority tends to make the tax administration more complex and difficult. The danger arises that the administrative body, having numerous laws to enforce and being burdened with many other duties, must systematize its work and adopt fixed standards. Hence, its work becomes more or less routine and arbitrary. It loses personal touch and interest. This indictment, nevertheless, illustrates the difficulties and also the advantage of extreme centralized control. Whether there will be danger of bureaucratic centralized control depends largely upon the human qualities of the centralized body. In no small measure this danger also arises whenever the people become indifferent and tend to shirk their proper responsibility, under a democratic form of government. The crystalization of public opinion upon matters of taxation may be depended upon to serve as a check against the inertia and at the same time against unwarranted and arbitrary use of powers by central authorities.

The third and last general centralizing tendency is that which takes certain special forms. Time and space permit only brief mention of these types of centralizing tendencies. Probably the best example of this tendency is the establishment of central supervision over local expenditures. Such a scheme was introduced in Indiana by law, in 1919. Authority was given to the Indiana State Board of Tax Commissioners to examine and revise local expenditures. However, this power proved to be a more drastic measure than public sentiment in Indiana was ready to accept. At the present time the power of the Indiana Commission is confined to the reduction of local expenditures upon the protest of citizens from the district affected. In 1921 the state of New Mexico granted to its State Tax Commission rather extensive control over

local expenditures. Local budgets can be examined, and increased, reduced or approved by the state tax commission, and the decisions of this commission are final. Most of these schemes of central financial supervision have come into existence very recently and express a thought that may have a tendency to expand. For the present, however, this represents merely the indication of further possibilities of centralization in state and local relations. A number of other plans pointing in the direction of further centralization in state and local relations are just beginning, but will probably be extended in the near future. Some bodies have already achieved good results, through the introduction of uniform accounting and auditing in local finance. Another possible form of control is over the issuance of bonds and the creation of local debts. The one great difficulty, however, with all these methods of central supervision is that they offer a great many opportunities for friction between the central authorities and the local districts concerned. Another limitation to the development on the part of the central bodies of such a varied program of financial supervision is involved in the tremendous tasks that will burden the central agencies, if such boards undertake to perform all their duties seriously.

Summing up the centralizing fiscal tendencies in state and local relations, three broad movements are to be noted. First, there is a cumulative movement to bring further centralization in the administration of the general property tax. This centralization may be briefly reviewed as a centralizing tendency, which takes away powers formerly enjoyed by local officials; a centralizing tendency which directs, supervises, and controls the work of the local assessor; and lastly, a centralizing tendency which disciplines the local assessor. The second general step in the direction of centralization is expressed in the movement connected with the administration of special taxes. This is illustrated in the centralization of inheritance, income, gasoline, and many other special taxes. The third and last expanding tendency toward centralization expresses itself in numerous particular ways; namely, central control over local expenditures, central control over local debts, central supervision of local budgets, and central supervision of local financial accounting and auditing.

During the growth and progress of the taxation relations between our states and the local units of government, two tendencies have developed; one making for centralization, and the other for devolution. While in many places there has been an earnest protest against this tendency towards centralization and a plea made for decentralization, nevertheless the prevalent emphatic movement is toward centralization. This tendency to centralize is not peculiar to any one state but exists in varying degrees in every state in the union.

This growth of centralization has been partly due to the developing consciousness of the people, who are becoming better able to think in larger spheres and to have more confidence in government authorities who are farther removed from their immediate experience and control. It should be noted that this is a counter-tendency to that local prejudice and narrowness of mind, which gives force to the opposition of centralization, on grounds of political tradition and custom. Moreover, changing social and economic conditions have helped to stimulate the movement in favor of further centralization. The machine process and the large-scale industrial system have made local communities, relationships, and interests more inter-dependent. County and township boundaries have become somewhat artificial. Provincialism is out of place in this new environment. By means of rapid communication, education, newspapers, motion pictures, and radio, people in different parts of the state are developing more or less common tastes, standards, and ideas. Then again, the great increase in the tax burden in recent years has brought with it a greater demand for equality and justice in taxation. Centralization has been looked upon by many as the chief method for accomplishing greater justice in taxation. Centralization has further been deemed desirable and expedient to get a more efficient tax system. The creation and the maintenance of a central tax authority are considered to be essential to establish and perfect a sound businesslike tax system.

Whether a higher degree of centralization than we have at the present time, in our several states, will "make good" depends upon numerous complex situations. The present trend of progress in state and local relations, however, is unmistakably toward a greater degree of centralization than exists today. The tendency toward centralization is a "going concern". Future fiscal reform programs, in order to be effective in state and local relations, must invariably propose further centralization.

CHAIRMAN PAGE: The meeting is open now, gentlemen, for any general discussion that you may see fit to indulge in.

MR. A. S. COODY (of Mississippi): As you all know, at one time Mississippi tried to divorce itself from its sister states. Some of us have felt that possibly it has never come back, but since I have attended this meeting and listened to the discussion of your tax problems, I find that we are still one of the sister states. You have the same problems and the same conditions with which we have been confronted.

I have been especially struck with the paper of Mr. Zoercher of Indiana. We have found that in our state, from four to ten times the state tax is imposed by the various taxing units. We have, as you all have, our county boards imposing rates; we have school

district boards imposing rates; we have a road district imposing rates; we have a drainage district—a great many of them in our state—and in addition to that we have something which few of the other states have, and that is a levee tax. Part of our state—some three or four million acres--is subject to overflow by the Father of Waters. We get all the water that falls on a great part of the United States, and it costs us ten or fifteen million dollars a year to keep it off from us, so we are confronted with the control of local expenditures, and we have tried all the plans that Mr. Zoercher has enumerated, and then some.

In the first place, we have the restriction that local boards cannot issue bonds in excess of ten per cent of their assessed valuation. They have gotten around that by increasing their assessments, and when that method was exhausted, they applied to the legislature for a special act permitting bonds to be issued in excess of the ten per cent.

Our road districts cannot issue bonds in excess of ten per cent of their assessed valuation, and that has been gotten around. We limit our counties to an eight-mill levy for general county purposes, but they get around that by proceeding to levy a tax for a special purpose. They will build a courthouse, or construct a special bridge or employ a county administration agent, and increase expenses. If they cannot do anything else, they will build a jail.

Then we have tried the plan of requiring them to have a budget; they are required during the month of September to prepare a budget, and are forbidden, under penalty of the criminal law, for spending any money in excess of that budget. You know it is easy to get around that budget. If they are going to need fifty thousand dollars for some purpose, they will make the budget for one hundred thousand dollars, and, of course, they would not exceed it.

So we have tried all these experiments and means of curtailing and controlling expenditures. We have proceeded upon the theory that the people themselves would not impose too much taxes, but that has proven a fallacy. When people go out and boost for a good road or for a school building or special improvement, they can show that it will cost only two mills on our present assessed value, and they tell you that when they get this road built values will increase, and that they will get a lot of those thrifty and industrious farmers from the Northwest and Middle West, who will come down to build up this country; the result is they vote the bonds and the taxes are increased, and it comes to the tax commission. We get it all.

We have tried other experiments on the basis of Home Rule, but I have become convinced that the only remedy is for a centralized authority to control local expenditures and the issue of bonds. I have not examined it thoroughly, having only just listened to it;

but I believe that commissioner Zoercher has put his finger on the remedy, and I believe that if we can discuss this question and go back to our people with a remedy that would prevent the profligate expenditure of funds by local boards, by municipal boards and other spending authorities, we shall have done a wonderful and lasting service. I think that is the great question that is before us, because if taxes are collected, they are collected because there is a need for them to meet expenses and obligations which have already been incurred.

I should especially like to have this question discussed, and hear the views of other people on it, because I think it is one of the great questions that we have to deal with. I know that it is a question that we are most interested in in my state.

MR. DYER (of Ohio): I hate to get up from Ohio in this meeting. At the other sessions they showed up our tax system for us, and Kansas took that off our hands today.

Now, on tax limitation, for the information of the convention I want to give you a little inside history of our so-called Smith law—so-called tax limitation law—in Ohio. It was conceived by a lot of bankers, and was written to make a market for money. It was not written as a tax limitation law, for the benefit of the State of Ohio; it was written in iniquity. It is the most abominable law ever passed in the United States. Those gentlemen hired experts. The original levy was ten mills for all purposes, and those fellows figured out that that would be insufficient for cities and school districts, and as there was plenty of money in the institutions, they took that way of creating school districts, and of creating a market for money. It was very successful, and made a market for money. The law has been amended until it is a fifteen-mill limitation now.

The cities that the Professor spoke about are getting their just deserts. They need to levy occupation taxes and everything else. As a warning for the future, it is a good thing for them. Cleveland was in a pretty bad fix, but they had a Mayor there, who is out of office now, who started with a deficit, and I guess he quit with about one and one-half million dollars in the treasury. There is plenty of money in Cleveland if it was taken care of.

Another phase of it is that most of Ohio has not been appraised for fourteen years. Eighteen counties are in process of reappraisal now. We were levying taxes on, say, the 1910 duplicate; bonds were issued for current expenses; bonds were issued to pay interest on bonds that had been refunded. I don't suppose there is any worse tale that could be told about any state in the Union. The trouble with the limitation was that there was no debt limitation. That was the root of the whole thing; but I think that now we have the model debt law of the United States. It went into effect last January, as a safeguard for the tax limitation law. We

cannot borrow money for current expenses now. Our bonds are all serial bonds, and they cannot be issued for longer than the life of the improvement. I do not think Ohio will depart from the limitation law. I think we shall safeguard it.

The Professor also spoke of a budget commission. In Ohio they call it that, but it is a paring commission. They haven't any power except to cut the tax down to the limitations. If the tax district levies twice as much as it needs, within the fifteen-mill limitation, it has no authority to cut those taxes. It is not a proper budget commission at all.

In these fourteen years a lot of bonds have been issued. We had a whole flock of so-called uplifters and reformers in Ohio, who wanted to build a lot of nice schools, whether we needed them or not, and we have that condition corrected in Ohio. I think we shall come back next year, if you quit making fun of Ohio, and tell you that our tax limitation law is a success.

It says: "Thus far shalt thou go, and no farther," and then it gives the people referendums; and the referendums are working very well in Ohio.

In Cincinnati and Youngstown I don't know how many thousands of dollars of bonds were submitted in the primary election in August, and I think nearly every one of them went down in the vote. Bond issues are having hard sledding in Ohio. The people, I think, are having something to do with the tax levies.

I think it is a good thing for civilization once in a while to be crucified; to find out that they are paying taxes. This has gone a long way toward leading the public along the lines that they should go in every state of the Union.

CHAIRMAN PAGE: Any further discussion?

MR. ZANGERLE (of Ohio): I am also from Ohio. I am one of the administrators of the general property tax law. I have no brief for the tax rate limitation laws as they existed in Ohio until 1920. They fixed inelastic, inflexible limitations. I think, however, that the provisions we now have for a limitation of rate, subject to modification by a vote of the people, is of great advantage, in this; that it educates the people as to what is happening in fiscal matters; and I believe that this is the most serious problem that confronts the administrator of our tax laws, with the mounting taxes as they have been shown to you this afternoon. Everybody is trying to duck the responsibility for these increases, especially when he is an elected official. And it does not change the situation by saying that the tax commission should be allowed to do it, because the tax commission is subject to certain political influences.

The tax commission is appointed, gentlemen, by the Governor; and the Governor is a political agent, and they do not like to lose

their job; but it is a great asset to an administrator to have the public fully understand what is happening to their funds.

Now, when they want more money in Cleveland, or in any of the cities of Ohio, they are confronted with this rate limitation, a very low limitation, fifteen mills, one and one-half per cent on the valuation of the property, and of course the next thing is: How are we going to get the money? And next, we have to get it by an increase in the duplicate, and the administrators do not care to do that, because they do not care to assume the responsibility for increased taxes, so it has got to be done now by the people themselves.

Now, do you know of any way of making the fiscal problems the people's problems? I do not. I have not heard of anything today that is calculated to get that public sanction which alone fixes the character of your laws and the character of your administrators; and therefore I say that in Ohio I believe the electorate know better today what is happening to their funds, why tax-spenders need more funds, and what is being done with those funds than any other state in the Union.

It is far better to appeal to the people for increased revenues, and increased rates, than it is to appeal to the tax commission. It is no trick in our cities to get ten people to object to the tax rate and take it up to the tax commission, but with two to four thousand taxing districts, how is it possible for a tax commission to consider the local needs for which only our local bodies are organized, and the problems which our local bodies know best how to solve. And so I say, as an administrator of the law, I like this tax rate limitation as it now is in Ohio.

MR. HIEATT (of Kentucky): I should like to ask Mr. Zoercher which he regards as the more effective, with respect to bond issues, the law of 1919 or the present law?

MR. ZOERCHER: The law of 1919.

MR. HIEATT: That was your first law. Under the 1919 law you had to O.K. every bond issue?

MR. ZOERCHER: Yes.

MR. HIEATT: Now you only have to pass on those on which the taxpayers ask a review on. Which would you advise in our state? Should we propose the Indiana plan — which plan would you advise?

MR. ZOERCHER: If you propose to meet the cry of a central board interfering with local authorities, you better adopt our present plan, because unless enough of our citizens take an interest in the matter to sign a petition, it does not come before us. Under the 1919 law everything came before us, even five hundred dollars.

I do not think that ought to be; I think there ought to be some limit, say five thousand dollars. But now in many places they do building which they absolutely do not need. Nobody wants to be the goat; they don't want to sign the petition. I think Tom Marshall had it about right when he said: "When they have an issue of bonds, it ought to be approved by the State Board of Tax Commissioners."

We made the mistake at that time of having all the hearings at Indianapolis. If we had had all the hearings locally, under the original law, there never would have been objection. The contractor, the money-spender, could pay his expenses to Indianapolis, but if the taxpayer objected, he could not afford to go there.

When we started out first we had to learn. When a petition came before us and a schoolhouse was necessary, we approved the bonds. We found two schoolhouses in Indianapolis where they had thirty-six classrooms in those two buildings. Bonds were issued first in the amount of $325,000. Six months later they came with $525,000 more for those two buildings, and three months later for another $200,000, making a total of $1,055,000 for those two schoolhouses. We told them to advertise and receive bids. We did not approve the bonds until they filed bids for the entire building.

This thing occurred to me on a $55,000 school house. A contractor entered the preliminary hearing, and was told that he should have properly advertised bids, and then we would approve the bonds. The contractor said to me, "You saved that township, the way you did it, not less than $10,000." I said, "How do you make that out?" He said, "I could not put it over on you fellows." For that reason he put his bid down, and he was not the low bidder.

Of course, we had the authority to employ special help, and we have five men with us, and they go out. We have one engineer, who is one of the most competent men in the state.

QUERY: Why was the 1919 law repealed?

MR. ZOERCHER: As I say, we had all the hearings at Indianapolis, and the party in power declared for Home Rule, but they got such an overdose of it that the governor himself, who made the campaign on that issue, recommended to the legislature that something should be done to put a check there. All the candidates for governor, all but one, made the old cry against this law, but the successful candidate did not make that cry against the law; he did not say a word against the law; he made his campaign on unnecessary expenditures, which was proper.

MR. SIMMS: I do not want to prolong the discussion, but I do want to suggest to the chair and to the conference that we make some effort to have the papers published as soon as possible.

In many of the states the legislatures will meet soon after the

beginning of the year, and tax questions will probably be before every legislature in sesssion in January, and I feel that many of these very excellent papers will be of great value—I know they will to me and to other states that are considering various phases of tax questions and tax administration.

We have heard these papers read and discussed, and they have been very inspiring as well as enlightening to me, and while we have not had an opportunity to discuss them, for want of time, yet we may fully digest them if we can have an early report containing these contributions.

Personally, I feel that this session thus far has contributed some very valuable literature on tax problems in this country. I enjoyed every paper most thoroughly, and I want the opportunity personally to study those papers as soon as may be.

I make that suggestion so that those in authority will take the proper action. I am a young member.

CHAIRMAN PAGE: Every effort will be made, sir, to get them out as soon as possible.

MR. LELAND (of Kentucky): Since the review depends upon the petition of ten taxpayers, have you any notion as to the proportion of the total number of levies and bond issues that the commission is called upon to review, so as to compare that with, say, the 1919 law, where you were required to review each one that was proposed?

MR. ZOERCHER: I could only say that under the amended law, of the bond issues brought before our board, we approved twenty-three million and disapproved fourteen million. How many were issued that were not appealed, we have no record of, but I want to say that the taxpayers are beginning more and more to stop unnecessary improvements. This taxpayers' association, of which Mr. Miesse is secretary, has done a great deal in the last year to educate the citizens in the state, and they have been partially responsible for a great many of the tax levies being appealed. They have until the fourth Monday in September to file their petition. There were quite a number of them coming in; I think we shall have not less than two hundred this year. Of course, we may have more.

A great deal of work is done by this association in appearing before the taxing body when the levies are fixed and keeping down the levies in that way.

As I said, in the city of Crawfordville they took off fifty cents on the dollar; this taxpayers' association accomplished that.

MR. ZANGERLE (of Ohio): May I add just another word: I do not want to detract one iota from the splendid machinery in our sister state of Indiana, but let me just give you a picture. While

there were perhaps forty or fifty appeals, as I gathered from what Mr. Zoercher said, I think it is no exaggeration to say that in Ohio annually we have perhaps a thousand referendums to the people, asking for permission to adopt a limited rate; that is to say, a quarter of a mill, one-half a mill, one mill, or two or three mills, in addition to the existing rate, for one, for two, for three, for four or for five years, and then they have to go to the people again, and you can imagine that when these authorities go to the people, they have got to get out their chart; they have got to organize their citizens committees who are going to stand for these things; they have to educate the people, and I think that is a splendid thing.

Another point which perhaps I did not accentuate is that these low rates certainly do stimulate and increase assessments or increase the amount of property on the duplicate. In my county, in 1920, as I remember, before Indiana started on its reappraisal, I think my county had as much property on the duplicate as the entire amount in the state of Indiana. We had at that time about $2,250,000,000 of real and personal property. That is very close, isn't it?

Mr. Zoercher: That is what it was under the old law.

Mr. Zangerle: Prior to 1920 or 1919?

Mr. Zoercher: Yes.

Mr. Zangerle: In 1920 we had about that amount in our county alone. Now, that was largely induced by the low rate. Somewhere there must be elasticity provided, and one way to provide it is to go to the people and get authorization for more rate. Perhaps, theoretically, you ought to extend to your public officials sufficient confidence and let them spend all the money they need, and of course they need all they get and more too. Somebody said this evening that the problem was to give the public spenders sufficient revenue to economically administer the government. You cannot do it. You will never provide enough. I want to correct Mr. Dyer; a moment ago he said there has been no reappraisals for fourteen years. We appraised in our county in 1916, which was knocked out by the courts. We reappraised it in 1917, and that stuck. We reappraised it in 1920, and that stuck; and we are reappraising it now; so we have been reappraising a great deal of the time. There has got to be either an increase in the duplicate or an increased rate. Before we started to reappraise I called in the county authorities and the school authorities, and said: "I am not going to reappraise and be the goat for you fellows; if we reappraise with these limited rates, all you have to do is to file your budget and ask for so many more millions of dollars, and under the law we shall have to give it to you. If you want me to re-

appraise, you have got to say that you will stand by the same amount of revenue you had last year; you county authorities got so many millions of dollars more than last year, your education authorities got three million dollars more than the former year, and your municipal authorities got three million, and that ought to be enough until we get through reappraising."

Do you think they stood by their contract? No. They filed an additional budget. Now it is up to us to find some way of making them perform their contract. How are we going to do it, I don't know, but we are going to do it somehow.

Mr. Zoercher (of Indiana): I just want to make this observation. I am not criticizing the plan they have in Ohio, but they approve the bonds by their vote, and then when it comes to doing the work they are going to pay two or three prices. There is no way of meeting that except as we do in Indiana. In one of the counties they wanted $185,000 for a high school, and Judge Hough heard the matter, and presented it to the board; we checked it over, and told the township trustee that was at least fifty thousand dollars too much, and we told them to advertise and receive bids again, and when they received bids, on the same plans and specifications, without the dotting of an "i" or the crossing of a "t" the contractor, knowing his bid would have to be within reason, made it for $115,000. I could point out instances of that kind in almost every county in the state, contractors standing in with public officials. Somehow the grafter has been driven out in Indiana, where these matters have been appealed to the board, and we do not have any grafters—the fellows who go around with their hands behind them—public officials who ask if there is something to be dropped in by the fellow who is getting the job. Possibly things with you are different than they are with us, but I know my first experience when I was county attorney in my county; a bridge contractor came and looked at me and asked a peculiar question. I said, "Now, look here; if you want that contract, there is only one way you can get it; you put in the lowest bid, and you need not see any commissioners, and you need not see me." He says, "Thank God, I wish they would all talk that way." If you have ever had experience, you know that is the way they do; and we are trying to drive that out.

When I think of a schoolhouse within a stone's throw of where I live in Indianapolis, with its four-room addition and auditorium costing $176,000, it is nothing short of a crime against the taxpayers, and yet that was done; and the bond issue was approved by us; but that was before we learned the lesson; now we will not approve any bond issue unless we know what it is going to cost. If your contractor is right, and the matter is talked over and found to be right, of course we will approve the bonds.

We made a saving of $436,000 on eight school buildings in the City of Indianapolis. Theretofore the bond issues they asked for were not enough; they would always come in for more. That has been the history. We issued bonds in the years 1919, 1920 and 1921 in Indianapolis for over six million dollars for school buildings. Instead of paying the maximum of ten thousand dollars a classroom, they ran it up to thirty and forty thousand dollars. They do not run that way any more.

I am giving you our experience. We do not do as we did in 1919. When a showing was made that the improvement was necessary, they had to vote Yes; of course they would vote for it. Everybody was for the schoolhouses, but they did not think of what it was going to cost. They only needed them.

Now, whenever a bond issue is appealed to our board, the taxpayer knows just exactly what the completed bill will be; what the general contractor, lighting, heating, pumping and everything is going to cost—the whole building completed—and then we approve the bonds for them; and they are getting them for prices that are a whole lot different from what they were before.

Mr. McClinton (of Illinois): The situation in Indiana comes closest to real business administration of anything I have found.

I was in a city of considerable size down toward the South a couple or three months ago, where they had voted a bond issue. They built two new school buildings. A third one was standing midway between the second and third floors; it had been standing that way for six months; they had no money with which to complete it. The dear people refused to vote them any more money, and they were losing $200,000 that they already put in the building, because it was becoming so damaged through standing out there in the weather.

In my investigations I have not yet been able to find anywhere in the country a proper study of the budgeting of a bond issue after a community has voted it. A community votes $500,000 for a new building. How much of that should go into site, how much into building proper, how much into equipment, and so forth? A study of that, in my judgment, has yet to be made.

Let me just state this also: I want to mention two particular studies that have been made, because there has been a good deal of discussion in regard to fiscal independence; it was brought to my mind through the gentleman from the District of Columbia.

Dr. Frasier of Colorado has made an investigation of the efficiency of school systems—the large systems in the country—comparing those fiscally dependent with those fiscally independent.

This investigation shows that the fiscally independent community has the advantage over the fiscally dependent, so far as the efficiency of the school system is concerned.

Within the last thirty days there has been an investigation made and published, showing that the fiscally independent district is no more extravagant in expenditures than is the fiscally dependent school district.

I simply mention this because you may be interested in looking it over.

MR. DYER (of Ohio): I wish to correct Brother Zangerle in accusing me of making a misstatement. I said that Ohio has not been reappraised for fourteen years. The constitution of Ohio requires that all property be appraised at its true value in money, and the appraisement Mr. Zangerle refers to, he will remember, was made because the rest of the counties did not reappraise.

MR. ZANGERLE: Yes; that is, for two years.

MR. DYER: The fact is your property was not reappraised according to the requirements of the constitution.

MR. ZANGERLE: The whole property was appraised—

THE CHAIRMAN: I wonder whether this is our bear-pit?

MR. DYER: In regard to the operation of the law we propose to have in Ohio to control bond issues for schoolhouses and so forth, I think that over in Ohio we are opposed to the centralization of authority; we are opposed to any further centralization of government either in the state or in the United States, and we expect to keep fighting for the preservation of the Union.

What we propose to do in regard to schoolhouses is this: the plans of the architect shall be submitted to a state board, consisting of the Director of Education, the State Architect, and the State University as a fact-finding commission; they will send their findings back to the school board, and it will be published in the school district, so that all those who live in that school district will know the facts in the case before the referendum is had.

Just one question. I was not certain from Mr. Zoercher whether prior to making the appeal to the board in Indiana, these bonds have been approved by referendum vote.

MR. ZOERCHER: No.

DELEGATE from Connecticut: Some reference has been made to referendums and I am wondering what the experience is with reference to that. My observation is that when such a proposition is made to a city, the political workers and those interested in contracts get out and vote for it, and the public quite often are indifferent, and as a result the bond issue is generally approved on referendum.

Now, I should like to know whether that is a common experience with our states, where they use the referendum more than we do in

Connecticut. I have not been in favor of a referendum on financial matters. I do not believe in mob finance. I cannot think it results well as a rule, and I should like to have a little expression on that, keeping out of the academic proposition of referendum discussion. Is there any one here using the referendum who could give me an expression of opinion?

Mr. Zoercher (of Indiana): In the law of 1919 there was this one provision, that whenever the tax board refused a bond issue and the amount exceeded fifty thousand dollars, the taxpayers in that community, within thirty days, might file a petition asking a referendum upon that bond issue. We had under that provision about seven referendums, and on all but one the tax board was sustained, and that one was from White county, where they built, under the three-mill road law, a street around a public square and extended it out into the township, and made the people in the township help pay for that street. The tax board felt that that was such an improvement that the farmers ought to help pay for it, but as most of the voters were in the city of Monticello, they carried the referendum.

Mr. Forney (of Ohio): Since I have heard my state ripped up the back, and I have gotten near the door, in spite of all our faults in taxation, in the year 1920, we furnished three candidates for President of the United States, and two candidates for Vice-President, and we have lots more in the making.

Chairman Page: Gentlemen, the situation is a very interesting one. We are in a process of transition here in this country in the matter of local fiscal affairs, and we are confronted in the course of that transition with certain curious traits of human nature. There are a certain number of people who distrust any control from what they consider to be without. There are others who recognize that some control is necessary to prevent them from overtaxing themselves. I am reminded a little of an experience that was told to me by a senatorial friend in Washington. A heavy shower of rain came along and he said he had his umbrella with him and he happened to pass a door of one of the office buildings where the young ladies were just coming out, so he offered to show one of them under his umbrella across to the street-car, but he said she gave him a cold eye and paid no further attention. Another young lady, however, accepted with a great deal of graciousness his invitation, and he showed her to the street-car. He said, "You know, one of them trusted me and the other one did not."

Now, gentlemen, if this thing is to succeed, you have got to prove in the course of time, as Mr. Zoercher is trying to prove, that centralized administration, centralized control over local affairs,

can be trusted. It is going to take some time; it will be an educational process; but that is true about everything that deals with taxation.

I am inclined to think, myself, that as time passes and we see the results, the better business management of our public officials, we shall be more and more inclined to apply to them very much the same principles that we are applying to the management of corporation finance, and even of private finance, but it is going to take time.

I think that the papers we have heard have been distinctly optimistic, and I believe that ten years hence, when I hope all of us will be in position to gather together again, we are going to find that the development has been surprising, because the need of it is great, and we are getting the men who can put this development over in such a way as to commend it to the people who need it

MR. COADY: With regard to approving bond issues by referendum in Mississippi, we have issued about $115,000,000 worth of bonds for local improvements. I should estimate that there are about 2500 different issues. I know of only one case where a bond issue failed, when it was voted on—and they are all voted on in that state—and that was in one own, where they had a falling out over the location of the school district.

MR. HUNTER (of Illinois): I think there is a real danger in the referendum, especially in a community where they have a dozen school districts, and want to establish a new one. I happened to go through that proposition less than two months ago. We really needed a new school house. It came to referendum. It simmered down to the fact that the people of that particular district were against people on the other side of the city; the result was the election lost. The people over there had their schoolhouses; we didn't. We did not get it.

SECRETARY HOLCOMB: I just want to call your attention to the usual photograph, which we shall attempt to have taken at twelve-thirty tomorrow. It is very important that you all pass that word along.

Just one other item. I promised the Direcor of the Census that I would call the attention of the conference to the digest of state laws that he publishes, and which is issued by the Department of Commerce. There are a number of these circulars here, and those of you that haven't the digest, I take it, will want to procure it. It is obtainable for the nominal sum of one dollar, and it brings the laws, where available, up to the end of the 1923 sessions. It is a very valuable collection of laws on taxation.

CHAIRMAN PAGE: It is approximately five minutes to eleven. The Chair will entertain a motion to adjourn.

ADJOURNMENT

FIFTH SESSION

WEDNESDAY MORNING, SEPTEMBER 17, 1924

THE LOCAL ASSESSMENT OF PROPERTY

ROUND TABLE DISCUSSION OF THE CURRENT PROBLEMS OF THE ASSESSOR

PRESIDENT BAILEY: Ladies and Gentlemen: There are a few matters of notices to be given, some preliminary matters, that we can take care of at this time.

I should like to call the attention of the conference to the fact that it is customary with us each year to put on our best smiles and stand before the camera. The annual picture will be taken on the south side of the building at twelve-thirty today, and I should like to have you all there. I have such a splendid time at these conferences that when I go back home I like to get that picture and look at you again, and I am sure it will be a nice souvenir for you.

One other announcement; this morning we were notified that there is going to be a banquet in this room, so we have secured accommodations in the Buckingham Hotel, across the street, and we will hold our meeting there this evening at eight-thirty. We have fine quarters over there. Mr. Winston, Under Secretary of the United States Treasury, will be with us, and I am sure that we shall have a very splendid time.

The program for this morning is a Round Table, and it is to be conducted by Mr. Celsus P. Link, of the Colorado Tax Commission. Gentlemen, I introduce Mr. Link of Colorado, who will be the Chairman this morning.

MR. CELSUS P. LINK (of Colorado), presiding.

CHAIRMAN LINK: Mr. President, Ladies and Gentlemen: It gives me pleasure, and I feel honored to have been asked to preside at this important session. As usual there is quite a pressure to crowd our program. I mention this now, because we shall have to ask the volunteers at this session, as far as possible, to shorten their remarks, and in spite of all the good efforts of our worthy Secretary-Treasurer, Mr. Holcomb, and our President, Mr. Bailey, many of the delegates are asking to have the program shortened so that they may get away by midday of the 19th, instead of staying until that evening, as planned.

Personally, I feel as though this is a constant mistake. We haven't sufficient time for proper consideration, without shortening it, but there is always that tendency. We have assigned for this morning a discussion of the local assessment of property, a very broad and high-sounding title, almost beyond limits in extent. I wish, indeed, that for the property assessment alone we might have had at least a couple of days, in place of a short two hours. Assessment and taxation are so closely related that it will be difficult to confine ourselves to the subject, in which effort we should not be too technical.

Kipling, our greatest living poet, has written many strong stanzas, and the following is one that may be well taken in reference to just and legal assessments:

> "No easy hope or lies shall bring us to our goal,
> But iron sacrifice of body, will and soul."

People directly or indirectly make all laws; people directly, by purchase, sale and construction, establish all values; people directly or indirectly, and at the most, very directly indeed, vote all taxes, yet when tax-dodgers, demagogues, cheap politicians, low-grade newspapers, and unfair agitators and self-seekers get through, it requires the concerted efforts of all taxing people to sustain the truth, and anything like law and order in assessment and taxation. By this I do not wish to criticize fair and truthful agitation, which should be welcome on all occasions, and which always is good; nor do I wish to cast doubt upon the people *in toto,* or in fact upon any more than a small minority indeed, because our years of experience have proven conclusively that easily nine out of every ten people, in all walks of life, will be just and fair, if they properly understand about the situation in assessment and taxation.

Let me suggest one thing of paramount importance; in order to bring about fair laws, and the administration thereof, we should forever turn on the great light of truth and educate all of the people all of the time. As important as it is to require wealth to pay its part, it is far more important to teach all people to be good citizens and be not only willing but anxious to do even more than their part, because if you make people good citizens, it will be easy to adjust all of our difficulties, local, national or international. And let me say here that the reason I have always been such a staunch advocate of this association is because it is and always has been, since its organization, the greatest agency ever known in the history of the world for the advancement of truth, justice and equality of taxation. That may sound extravagant, but it is not.

Practically all the good we have accomplished in Colorado in the past twenty years has been through the splendid influence of this association, and I believe the same statement may be truthfully

made with regard to all of our other states as well as of our Federal Government.

Let me suggest that, first and most important, from our Nation down to our smallest village, is to labor to keep this, the most important function of all government, out of politics, to expose the evil influences, and to constantly strive for better laws and better administration, under fair and capable officials.

If you please, these are the things that this association stands for.

Personally, I believe that for general property assessment, full value, such as Colorado and many other states have, and always have had but never could enforce without centralized supervision, is the best and only honest basis to work upon. I have never been able to conceive of a reason for uniform fractional value. I studied that angle a good deal many years ago, and I never could figure out a good reason, except that it was an easy way to persuade a taxpayer to consent to high values. That is, as an assessor, I might go to a farmer and say, "Smith, what is your farm worth?" I might know it was worth easily one hundred dollars an acre, and he might know that it was, but he naturally would hedge a little bit, knowing I was the assessor for taxation. I would possibly say to him, "Smith, don't mind about telling me the full value of your farm, because we assess at only twenty-five per cent of the value, anyway." "Why," he says, "sure, it is worth one hundred dollars; I will be assessed twenty-five dollars."

It is complicated, and I feel it is unfair and dishonest to taxpayers. It has no direct bearing upon assessments, because inequality in taxes goes up or down as taxes increase or diminish, of course.

In endeavoring in 1913 to enforce the full value assessment in Colorado, the tax commission drafted, recommended, and the legislature passed, among its first acts, strict tax and debt limit acts, in companion, in an effort to reach full value assessment.

Now, what I say in reference to this I do not wish to be construed as in criticism or disparagement of Indiana or any other state, because Indiana has made splendid accomplishment in this line; I think the best of any one state, but this is for guidance and thought along the line.

The limit of levy act was a safeguard, in that if the tax established and permitted by the tax commission was not satisfactory to the county, town, city, school district, or whatever it might be, the increase might be submitted to direct vote of the electors concerned. The scheme is not working out. We were seldom called upon to deny great increases, but in a few cases we were, and with one or two marked exceptions in several years, the local officers went right back home, posted their notices, and submitted these increases to the people themselves; and, as I said, with two excep-

tions, as I recall, in several years, the people themselves, by a three-quarter majority, and frequently by practically a unanimous vote, approved the increases. That was the result of the tax limit, where it got back to the people.

Our debt limit was too strict. We automatically got bond issues down to a point that existed before the increase in valuations. The taxpayers' leagues themselves came into the next legislature and had the limit widened for their own convenience.

Speaking of road and highway contracts, which are next in importance and extent to the school tax in all of the states, we have in Colorado, we think, a very efficient highway department, under a splendid engineer, who has seen to it through himself and his assistants, that prices and contracts are held close. Unfortunately during the past two years many contractors in the state have gone into bankruptcy. Just before I left Colorado the other day, one of our biggest contractors had failed and carried with him some subsidiary companies. So I mention that there are troubles on both sides of this situation.

To illustrate the great importance of securing fair assessments and valuations under the general property tax system, I need only to mention that of approximately a total of fifty millions of dollars in taxes from all sources in Colorado, property contributes about forty-five millions, and of these forty-five millions, farm and city real estate, utility corporations, livestock, merchants and banks alone pay over 86 per cent; and I think Colorado may be taken as a fair general average of the condition in all the states.

Our assessments, which I think also are a fair average of all the states in the Union, have brought about tax rates, on an approximately full-value assessment, of from two to four per cent, which means that from twenty to sixty per cent of the net income of property is annually taken in taxation. Why, ladies and gentlemen, income and inheritance tax rates are merely child's play against the property tax rates.

We talk of multiplicity of taxes. Up until recent years in Colorado, as in practically all other states, whenever any city, county or other local subdivision, including school districts, needed more money for new fields that were being constantly opened up, where did we place the tax? Upon property.

Today in Colorado, as in most states, farms, to say nothing of city property, which pays many more kinds of taxes, on an average pay at least thirty kinds of taxes. So you can see what an important subject we have to consider.

Now, turning aside a little from the technical title, which is so closely interwoven with taxation, as I see the situation, our efforts should be constantly directed to holding taxes down to the lowest point, consistent with good government, and, as rapidly as possible,

shifting a part of the tax to other wealth that is not at the present time paying anything like as heavy a tax as is property.

Now, ladies and gentlemen; so much for the preliminary of this session. I suggested in an informal way and requested that several of our members lead discussions on more important topics. Of course, we can take only a few of the most important, and in order to get through the work, I am going to suggest that we first have these leading remarks, and then in so far as we have time left, we shall have general discussions.

First, because it is most important throughout the Nation, I am going to ask for a discussion of the assessment and valuation of farm lands, led by H. L. Eveland, tax commissioner of South Dakota.

THE VALUATION AND ASSESSMENT OF FARM LANDS

H. L. EVELAND
Member, Tax Commission of South Dakota

The tax from tangible property will be, for many years to come, the principal source of revenue in most of the states of the Union. This tax, of course, will be supplemented more and more as time goes on, by income taxes, and excise taxes of various kinds.

As long as an ad valorem tax on tangible property is the basis, and must continue to be the basis for raising a large part of the revenue to meet the expense of organized government, the several states that depend largely on this source of income to meet their requirements, must give careful study to determine the things that will tend to bring about equality and uniformity in valuing property for taxation purposes.

The average taxpayer is by no means an economist, in the sense of being able to analyze the necessity for the demand made on him. About the only convictions that he has along this line are that his tax is exorbitantly high. He is often inclined to believe that valuations alone are responsible for the amount of tax which he is obliged to pay. This same belief (I am sorry to say) is more or less prevalent among local taxing officials; at least, it would seem that it is, from their action in many instances. However, there is an element of expediency that can often be detected in the work of local taxing officers. The fallacy of undervaluation is too often overlooked, in an attempt to cater to the demands of their constituents for low valuations. This being the case, county and state equalization boards are often confronted with returns that are unequal and unfair, often to the extent of making equalization an uncertain matter.

Since it is intended that this paper shall be devoted to the valua-

tion and assessment of real estate, or more particularly farm lands, it is necessary that it should be confined to suggestions for remedying the existing inequalities that prevail in the assessment of such property.

States that have the county as the unit for assessment purposes, have, we believe, taken an important step in the matter of equalization, while making the assessment. There still remains the element of difference of opinion as to value, but it does not exist to the extent that it does where each township assessor works independently of any supervision by the county as a unit.

One of the chief points featured in our instructions to assessors, both through printed matter, and in lectures that are given to local taxing officials in each county, once each year, is that the standard of value fixed by statute, not only in the assessment of all property of a certain classification in his taxing district, but between the various classes as they appear on the assessment rolls, is necessary in the interest of equality.

Lack of willingness on the part of all assessors to assume the responsibility that is necessary, in order to secure a fair, uniform and impartial assessment, often results in a return that is manifestly unfair.

We believe that in the State of South Dakota, where we depend almost wholly on local assessments and an ad valorem tax, we have made great advancement in the past six or eight years, in securing a more uniform valuation of all property subject to taxation. This condition we believe is true in a general way; although we are sometimes confronted with specific cases, such as came to our attention a few months ago, in which we could see in the valuation of certain property last year, a reflection of value fixed twenty years ago. These outstanding cases of lack of initiative on the part of the assessor will continue to exist under the system requiring assessments by local authority, until a remedy can be secured by legislation that will vest authority, at least in a partial way in a county assessor, under the county unit system, or county supervision in some other manner.

The question then arises—what can be done to get a more uniform valuation of farm lands under a system providing for the listing and valuing of property by local assessors? Anything is worthy of consideration that will tend to stabilize their work and at the same time will not destroy the initiative of the assessor who is willing and capable of making an assessment that results in fairness to all property owners.

We would mention first in this connection the classification of farm lands for the purpose of fixing a basis for valuation. This would to a certain extent relieve the assessor of a share of the responsibility which he is sometimes prone to relieve himself of,

and pass it on to the board next higher in authority, and would at the same time serve to secure a more fair and equitable assessment. It would serve also as an aid to boards of equalization, in arriving at proper comparative values between different taxing districts and between different counties. It would serve to secure a basis for valuation that would correct the prevailing practice of assessing the cheaper and, in some instances, almost worthless lands too high, and the better and more favorably located lands too low; and would serve as a barrier to attacks from land owners who besiege county and state boards with complaints of discrimination, when no such condition exists.

Admitting that classification would do all of the things claimed for it in this paper, the next thing to decide is how to proceed with such work, and whether or not it would be universally practical.

We believe that counties that undertake such work should have a record card system, similar to that in use in many cities in the assessment of lots and structures, and that such cards should contain provision for giving the character of the soil; presence of gravel, sand or stone; depth to water; lay of land; prevailing slope; presence of ravines, runs or streams; timber, if any; productiveness of soil; state of cultivation; drainage; whether or not tile has been laid where needed; distance to market; whether on main traveled road or not; rural mail service; telephone service; church and school facilities; presence of railroad right-of-way and fences; character of surrounding lands and other conditions that have a bearing on value, and thereupon give each political subdivision of land a rating by number or letter.

The work of classification, we believe, should be done by persons selected by county boards who should be men that are recognized as judges of value, and their work should be made subject to review on complaint, before accepting the same as a final rating.

In most of the states west of the Mississippi River, we have conditions differing greatly in different parts of each state. In nearly all of the states so situated and lying in the Mississippi and Missouri River valleys, we have some counties where the land is very valuable, and other counties which are sparsely settled and the land is of little value, so that providing by legislative action for classification of the same as a basis for taxation, and making it mandatory, might work a hardship in some counties, until such time as they become better developed, more thickly populated and the land becomes more valuable.

I am quite sure that classification of lands could be made successfully and without unwarranted expense, in many of the more populous of the middle west and northwestern states; as well as in states elsewhere in the Union, where similar conditions prevail; and should, I believe, be done by county option and at county expense by persons properly qualified as judges of value.

While we have no provision of law in our state, requiring classification for the purpose of establishing a basis for assessment, a few of the counties do make an attempt at classification for the purpose of aiding county equalization, with fairly good results as near as we are able to determine.

In one county, comprising sixteen townships and several fractional parts (making in total the equivalent of about nineteen townships), the county board has, for the purpose of equalization, classified lands as "A" lands, which are their better lands, "B" lands, those less valuable, and "C" lands, consisting of those lying along the Missouri River, quite rough and much of it untillable. They have then made four classes within each class, such as "A 1," "A 2," "A 3," "A 4," and so on, down through the "B" and "C" classes, letting proximity to, or remoteness from market be the guide as to sub-classification. This plan we believe is accepted in the county as a proper means of equalization. Classification by this method is based on the township as a unit, and the same practice has been adopted to a considerable extent by assessors, as a guide in making the initial assessment.

Considerable discussion has been had in our state on the proposition of a state-wide classification of lands for taxation purposes; in fact a bill was prepared during the legislative session of 1921, to provide for such a survey, but on account of the lack of support, due to the initial cost of making the survey, the matter was dropped. In the more thickly settled parts of the state, the necessity for the survey was not so keenly felt, although in our opinion, much improvement would result by proper classification in such counties. In the more sparsely settled counties, where the survey and classification is really needed most, it was considered that the cost, added to the already heavy indebtedness of some counties for road and bridge work in opening them up for settlement would make a burden too great to make it advisable to undertake at present. If the bill had contained an optional feature, it would, in our opinion, have become a law, and by this time a number of counties would have taken advantage of it, much to the improvement of the equality in the assessment of their lands.

The need of classification as a basis for fixing valuation of farm lands for taxation is, I believe, largely the outgrowth of a practice indulged in by assessors, of undervaluing the land, believing that they will thereby reduce the amount of tax that the owner will have to pay, which is far from what undervaluation actually results in, particularly in the case of the resident farmers.

The average assessor in the country districts is a farmer himself, often a land owner. His conclusion is almost invariably that he must keep down the value to protect himself and his constituents against a less scrupulous assessor in an adjoining township, not

realizing that perhaps from 30 to 50 per cent of the land owners in his township are non-residents of the township, and that they are the ones that get the benefit of undervaluation; that the very ones that he is seeking to protect by undervaluaton are the ones that own the personal property in the township that must stand the burden of which the land is relieved.

It is our belief that classification of farm lands, as a basis for valuation, when once properly made, will be a constant guide from year to year for proper asscssment and equalization, subject to change only when changing conditions of an extraordinary nature take place.

I believe no one who has had experience in taxation matters will take issue with me in the statement that inequality in the assessment of farm lands results more often from a tendency on the part of some assessors to undervalue such property, than from any other cause. Therefore, much can be accomplished by a line of instruction — persistently followed up — for the purpose of showing assessors and other local taxing authorities the effect of undervaluation. We have been doing this in our state for the past several years, with noticeable effect.

There is not now a universal demand for low values on farm lands for taxation purposes, such as existed a few years ago, but on the other hand the returns from counties are sometimes accompanied by a letter of transmittal, calling our attention to the fact that the values as returned may seem high to us but that no reduction is desired, unless their land is grossly overvalued compared with land in surrounding counties; setting forth as their reason for such request the fact that they have tried to arrive at actual true value, and that any reduction from such values will result in shifting the tax from non-resident owned land to the personal property of resident taxpayers, making the personal property stand more than its just share of the burden.

Do not understand me to say that this is a condition that exists universally throughout the state. Only a few of the counties have awakened to a realization of the effect of undervaluation, but the fact that more taxing officials and taxpayers are doing so each year makes us feel that our efforts are not altogether in vain.

We believe that the greatest handicap that many states have at the present time in securing better and more workable tax laws is, that designing politicians, who seldom have any real understanding of such matters, are ever present with a panacea for all of the ills that any system may be subject to, and by convincing the electorate that their cure is the one and only, they often hinder legislation that would accomplish some real improvement, in the interest of equality.

CHAIRMAN LINK: I am asked by our secretary to read a resolution handed in under the rules, which will be submitted to the resolutions committee.

(The Chairman thereupon read a resolution which was presented by Mr. H. S. Van Alstine of Gilmore City, Ia.)

MR. SETH COLE (of New York): I have here a resolution which I desire to present, and I understand it will take the usual course.

CHAIRMAN LINK: Yes, sir. Just read it. It will then be referred to the resolutions committee.

MR. COLE: This resolution is very appropriate this morning, when the subject under consideration is the local assessment of property. It directs attention to the necessity for consideration of the effect of the general property tax upon the timber interests of the country. I am submitting the resolution by request.

(Reads resolution)

CHAIRMAN LINK: We are fortunate in having with us year after year an increasing number of representatives direct from different classes of taxpayers, and frequently organizations representing all classes of taxpayers. We have with us this morning John C. Watson of Chicago, the tax expert of the Illinois Agricultural Association. I am going to call on him for a few remarks in regard to suggestions for improvement in the assessment of agricultural lands in Illinois—Mr. Watson.

MR. JOHN C. WATSON (of Illinois): Mr. Chairman, Ladies and Gentlemen: The organization which I have the honor to represent has been studying this question of taxation for several years. We found when we went into this subject that among our own people there was a most astonishing ignorance of taxation in general. They knew they paid their taxes; they thought their taxes were excessive, and they complained constantly, but they knew nothing about the machinery, or very little about the machinery by which taxes are levied, and little about the way in which taxes are expended, so that we of the Illinois Agricultural Association have regarded it as our prime duty from the start to educate our own people as to the machinery of taxation, the laws relating to taxation, and the proper results of taxation. We are still engaged in that; in fact we doubt if we shall ever get done with that job, because it is a tremendously big job.

I do not want to take much time this morning, but the chairman has been kind enough to ask me to make some remarks and suggestions on what could be done to improve the assessments of farm lands. Now, that is a pretty big subject. It is a big subject in the State of Illinois.

The first thing we started out to do was to find the facts. We had no theories ourselves. We could not afford to start out with theories. We wished to know what the facts were, so we began, about three years ago, to make investigations in various counties in the State of Illinois to find out what the levels of assessments were, to find out how much taxes were levied on land, and what those taxes were spent for, and we are still engaged in that work. As fast as possible we are conveying the results to the people in the state, and when I say this I do not wish to be understood that we are conveying these only to our people; we are giving them publicity. We find today many things that are of concern to other people, and we by no means try to hide these facts from other people.

Now, in the first place, Illinois is perhaps one of the best examples of a state in which under-assessment is common; I could almost say universal. It is nearly universal. If the law were followed, all property would be appraised at its actual cash value in voluntary sale. The law is plain enough, but practically no one follows it.

When we began making these investigations in various counties in the State of Illinois, in more than sixty of which we have now worked, we began to find a good deal of variation. We find counties in which the actual appraisement of land is thirty-five per cent of the actual value, other counties, especially in the southern part of the state, in which it will run as high as sixty per cent of actual value, and in one or two cases as high as seventy per cent of actual value.

We do not confine ourselves to farm lands in these investigations. We also tried to find the assessment levels of other real estate, particularly, of course, town and city lots, in those same counties. We wished to know whether the levels of assessments were fair. We followed the old plan which you heard discussed in the conference last year, by Mr. Blodgett of Connecticut, Mr. James of Wisconsin, as I recall, and by Dr. Adams, then president of the association; namely, of collecting a record of actual sales of property on warranty deeds, rejecting all that looked like trades or in any way gave intimation of being trades, rejecting all that were public sales, because they probably would not represent fair sales, rejecting all in which the amount of encumbrance was so great as to give a presumption that it was not a fair sale, and then securing, on the same property, the assessed valuations.

Let me add right here that our assessed valuations by law are one-half of the full valuations, so that if we have farm land or any other property assessed at fifty per cent of its actual value, the assessed value on which taxes are actually extended, would be only twenty-five per cent of actual value.

Now, we found these extremely wide variations in the state, and the variations are just as wide in the cities of the state. We have made known these facts in every county in which we have worked.

In about one-half of the counties in which we have worked we have found that as between city and country property, there was really no problem. They were assessed on substantially the same basis. In others we found some pretty wide variations, in some cases not so wide and in other cases very wide. We have given that information to the assessment and reviewing officials of the counties.

Now, my particular subject here was a matter of suggestions about what could be done to improve the assessment of farm lands. The suggestion I am going to make does not apply merely to farm lands; it will apply to any form of property, and in particular to any form of real estate.

You remember that when the children of Israel were down in Egypt in bondage, they were compelled to do certain tasks. One of those tasks has come down proverbially to this day, namely, the making of bricks, without straw.

Now, ladies and gentlemen, I am sorry to say that in the State of Illinois we are compelling—perhaps the word "compelling" is too strong—but our assessors, of whom we have all kinds, and our county members of boards of review are trying to make bricks without straw. They do not know what the levels of assessment of property are, and *there* is the fundamental error, Mr. Chairman, in the assessments in our state. They do not know what the levels of assessment are. Some of them think they know, but they do not know. I have heard all kinds of theories expressed as to the levels of assessments, and yet when you test them, you very frequently find that the facts do not square with the theories.

Now, here is my suggestion—I will be as brief in it as possible—I do not believe that the tax commission of the State of Illinois, or any other state, for that matter, should be merely an administrative body. In some states I am sure it is not by law merely an administrative body.

In the State of Illinois there is no legal warrant in the law creating the tax commission whereby it is an investigating body on this point. It is an investigating body on some points.

Now, the suggestion I have to make is this, that the tax commission, supervising the tax budget of the State of Illinois, should be an investigating and research commission, as well as an administrative commission, and if it had the facts, which I am sorry to say I do not believe it has, and if it conveyed these facts to the supervisors of assessments in the various counties, and to the boards of assessors in the two counties of our state which have boards of assessors, and if assessments were made on the basis of

facts, we should have a far better assessment both of lands and of town and city lots than we actually have, and equalization within the county or between the counties, would be a comparatively simple thing.

CHAIRMAN LINK: For several years we have had as a prominent member of our association the tax expert of the National Farm Bureau, and I am therefore going to call on Mr. McKenzie with regard to assessments on farm lands, past, present and future—Mr. McKenzie.

MR. MCKENZIE (of the National Farm Bureau): Mr. Chairman and Members of the Convention: I am afraid I am in about the position of a new congressman who went down to Washington a number of years ago. As usual they kept this new congressman in leading-strings for a while and did not let him get to be prominent, but after a while this gentleman got a chance to make a speech. He made it, and after it was all over he was very anxious to have some little applause or appreciation, and he ran against Uncle Joe Cannon out in the lobby. He sat down and began to visit with Uncle Joe. He said, "Did you hear my speech?" Uncle Joe said, "Yes, I heard it." He said that there were some new things in it and that there were some good things in it. Uncle Joe cocked his black cigar up in his mouth and said, "The only trouble is the things that were new were not good, and the things that were good were not new."

Now, there isn't much use in threshing over the old straw. You are pretty thoroughly familiar with this question of assessment, having gone over it year after year. I am not going to go into any of the details this morning. You all appreciate the importance of the subject. Without an equitable assessment there cannot be any equality in the taxes.

It seems to be the custom here to refer to the Kansas plan. You gentleman know that the gentleman from Kansas who spoke the other day laid down as his thesis uniformity and equality, but before he finished he admitted that he did not have either; that he had one standard for personal property and another for real estate.

Now, if they have not succeeded yet in Kansas in getting either uniformity or equality, I do not believe the prospects are very good for the rest of us.

Now, the thing it seems to me that would be profitable would be to go down into the roots of this thing and see why it is, as my friend from Illinois said a few moments ago—that nobody does it. Why is it that in Illinois, in New York, in Vermont, and in every other state of the Union the assessors do not keep their oaths? That is a fact. We know it; everybody knows it, from the governor down. Now, why is it that they do not do it? I think we

all know the reason. It is because the assessors in the local community where they live are supported in this attitude by the people. It is because the people do not want them to keep their oaths.

In the district where I live, in the town of Walton, New York State, we are not up to one hundred per cent, as the law calls for. Why is it? It is because the assessors are constantly under pressure to keep these tax assessments as low as possible. Why do they do that? They do that because the amount of direct state tax that we have to pay depends on the assessment.

Now, I think that same thing is true in other places; that the lower you keep your assessments in your county, the lower will be the direct state tax you will have to pay.

Now, that gets me down to the place where I thought we might possibly arrive at a point where we could derive a little profit from this discussion. If we are going to get to the root of the matter, then we are not going to do it by going to the assessors. We have got to do it by getting down to the ordinary man, the man on the street.

Now, is the National Tax Association going to change human nature? Well, it may be, but not in your lifetime or mine, in the United States. We have got to get another remedy for this. I think I can see a possible remedy for the situation, without changing human nature. We have a direct tax in New York, amounting this year to two mills; next year it will be one and one-half mills—two dollars a thousand this year, and next year one dollar and a half. Everybody that pays taxes is going to have that to pay, who has any real estate.

Now, there is also another state tax in the state, some of the proceeds from which we put back into the local districts. The amount so put back depends on this same thing, the amount of the assessment. My theory is that whenever we can turn back into these communities from the state more money than is paid out in the direct tax, the interest of the man on the street and the man on the farm is going to be changed. He is going to want the assesment up, so that they will get all the money for schools and other purposes from the state government back that they can; and when we get to that point I think that our troubles are going to largely dissolve, and the assessors are going to keep their oaths and do their duty. Now, I just want to leave that one thought with you.

There are some other reasons why that thing might be true. I think you men all know—I know you do—that the great bulk of the taxes that are bearing down on agriculture are the road taxes and the school taxes. Now, in the State of New York the constitution protects the education of the children, makes the education of the children a state function. Presumably all the people in the state are entitled to that service at approximately equal tax rates. We

are not getting it. In some districts the rate may be three or four dollars a thousand, and in some others it is thirty dollars. It is an absurdity. I think the state should see that those things are adjusted. I think it is perfectly fair that the larger proportion of the support of these things should come from the central government, and the general tax level should be equalized all over the state.

I think that is about all I have to say to you, but I will tell you one other little story, and that is one I heard about a fellow who went out to a dinner one night with Mark Twain, and they had a good time; felt pretty good. After a while this gentleman got up to make a speech; he mumbled along and did not have much to say. After a while he rather lost the continuity of his speech, and he leaned over to Mark and said, "Where was I?" And Mark said, "You are through."

CHAIRMAN LINK: It seems that many minds run along close to the same channel. We have a letter from J. Scott Junkin, of Kansas City, Missouri. It reads as follows:

ST. LOUIS, MO., SEPTEMBER 17, 1924.

NATIONAL TAX ASSOCIATION,
In Session, 17th Annual Conference,
Chase Hotel, St. Louis, Mo.

Fellow Members:

It seems imperative that this association take definite steps toward developing a proper procedure whereby the public may be educated in the fundamentals of all taxation, and I firmly believe the primary education should be concerning "The local assessment of taxes".

Education should begin in our public schools and schools requiring a money consideration. I believe that a large majority of school children attending the public school have an erroneous belief that they obtain education free. This erroneous belief exists because they do not give taxation much, if any, thought. I may add here that it is quite a problem to make their elders think and act on taxation matters.

I move that this association recommend to the governors of the states that they consider means whereby the children in our public schools and other schools may receive a primary course of instruction in local taxation.

Yours very truly,

J. SCOTT JUNKIN,
Kansas City, Mo.

CHAIRMAN LINK: Turning to the second largest and most important class of property in the states—town and city real estate—I am going to call upon a representative of one of the best, if not the best, administered systems in our states; to wit, Buffalo, New York—Mr. William J. Burke, the City Assessor. Mr. Burke.

THE LISTING AND VALUATION OF REAL ESTATE IN THE CITY OF BUFFALO, NEW YORK

WILLIAM J. BURKE
Chairman, Board of Assessors

In the year 1911 legislation was introduced, dividing the City of Buffalo into twenty-seven wards, and the work begun on the general city tax roll for the year 1912 went for naught and the work for a time was suspended.

The result of this change to the department was chaos; the result to the city exceedingly expensive; and the result, in its application, extremely confusing. The ultimate result of the bill necessitated the separating and rebinding of all the assessors' field books and the rolls for the city treasurer's office. The descriptions made from the maps did not even conform to prior division in 1906, but to the original division of wards in 1892.

In order that this confusion and expense might not recur, it devolved upon the board of assessors to devise some means to establish permanent tax sections that would be unaffected by political gerrymandering.

In 1912, the corporation council was directed to prepare and transmit to the legislature, for introduction and passage, a bill amending the charter, so as to confer upon the board of assessors authority to divide the city into tax sections, or subdivisions, independent of ward boundaries, for purpose of assessment and taxation only, to the end that hereafter the legislature will not disarrange the system of assessment, under which the department may be at the time operating.

In April the legislature enacted a bill authorizing the board, in its discretion, to divide the city into subdivisions, which shall be known as tax sections, of such extent and number as shall be convenient for the purposes of assessment and taxation, and shall describe and define the boundaries of such tax sections, and each of them, and report same to the common council.

On authority from the common council, in 1913, the assessors visited Milwaukee, Chicago, Detroit, Cleveland, New York City, Newark and Boston, where so-called modern systems were employed, and from the information obtained the board recommended to the common council the following: "That the City of Buffalo be divided into fourteen tax sections, and a deputy assessor assigned to each section."

In 1913 the personnel of the department consisted of three assessors, the same number as at the present time. There were eleven clerks in the department; about 100,000 parcels of land, aggregating over $393,000,000, conducted at an expense of $31,800.

At the present time there are about 112,000 parcels of land, aggregating nearly $848,109,720, conducted at an expense of $56,280, an increase in the valuation of over 100%, while the increased expense was only in the neighborhood of 50%.

The facilities and methods at this time were inadequate. Some people were required to pay a larger share of the public debt, in proportion to the benefits which they received. By a natural and inevitable tendency, the valuation of properties of small value were assessed at a higher rate, in proportion to their actual value, which caused a grossly inequitable distribution of the taxes in the city.

Upon these three men rested the responsibility of fixing the value of these 100,000 parcels of property, in about three months' time. This work was accomplished in an exceedingly desultory and unscientific manner, and the assessors encountered insuperable difficulties in determining the value for the city.

The assessors made a survey of the various wards allotted to them and determined the value of the improvement in an observational manner.

In determining these values, the assessors had no information to aid them, no detail pertaining to the building, as to size, interior improvements or revenue, and it is perfectly obvious that an equitable assessment could not be levied in this way. Is it to be wondered at that many inequalities, discrepancies and low values were discovered on the tax rolls?

Again, the three assessors were required to review once a year, during the month of December, the complaints, criticisms and objections to the values placed on the respective parcels and, during the twenty days of review, was an exceedingly difficult task for the board. The lack of detail to guide them caused a great many changes on the tax rolls, during the period of review, due to the fact that it was entirely necessary for the board of assessors to accept the statement of the complainant.

The above are the reasons that brought about the present system, the direct causes and a brief outline of the old system. The present method of figuring the value of land and improvements is as follows, first considering these facts about our city, to enlighten you of the volume of work and detail that comes within the scope of the bureau of assessment:

The City of Buffalo contains about 42 square miles.

There are about 112,000 parcels of land.

There are about 95,000 buildings.

The city is now divided into fourteen permanent tax sections and a deputy assigned to each district.

Each deputy has jurisdiction and the board, with the deputy, determines the value of about 7500 or more parcels.

First, taking up land values in resident, business and industrial sections in their respective order:

Land is computed on the so-called unit system; that is, having determined a base price for one foot front and 120 feet depth for residence property, about 2% is added to the base price, for each five feet of the excess depth. On all lots under 120 feet in depth, the same percentage is deducted for each five feet. This percentage is determined by a curve of value.

For all corner lots 20% is added to the base price, but for the first thirty feet of the frontage only. To illustrate: On a street where the base price is $50 per foot front, the value of a lot 30x120 would be $1500; if a lot on the same street was 150 feet deep, 9% is added to the base price, or is computed at $54.50 per front foot, making the value $1635; if the lot 30x120 is situate on the corner, 20% is added to the base price, or is computed at $60 per front foot, making the value of the corner lot $1800.

Business sections are figured on a unit price of one foot front, for 100 feet deep; the same percentage of 2% for each five feet is added or deducted on long or short lots, as in residential sections, the percentage differing in the curve. On corner lots 40% is added for the first 30 feet. For example: A lot 30x100, in a business section, where the unit price is $50, is assessed for $1500. If the lot is 150 feet deep, 15% is added for the extra 25 feet, making the price per foot front $57.50, and the assessed value $1725. If the same lot is situate on the corner, 40% would be added, making the assessed value $2415.

All large tracts of land, such as railroad property, industrial property and farm lots are computed on a square foot basis.

The location and the accessibility of the property has a tendency to determine the rate per square foot and for other influences a percentage is added. For instance: An industrial property that has railroad connections, is estimated at a higher rate per square foot than the parcel that has no railroad connections. A parcel that has railroad connections and water facilities is computed at a higher rate per square foot than a parcel that has just railroad connections.

The above information very briefly explains the method of computing the value of land.

In the survey of improvements, we use a "field sheet system". Samples are on exhibition here, and I should be pleased to have you inspect the same.

This sheet contains the owner's name and a description of the property. The deputy uses this sheet for his field work. He makes an exterior and interior survey of all the improvements.

The survey determines the kind of foundation, whether stone or concrete; kind of construction, whether frame, tile, brick, veneer or stone; kind of roof, whether wooden shingle, slate or asbestos.

He then makes an interior survey and obtains the following in-

formation; size of cellar, kind of heat, and light, number of fireplaces, number and use of rooms, number of rooms containing hardwood trim and floors, tiled and wainscoting, and the revenue or income of a flat or apartment, if rented.

After completing this survey, the board and deputy determine a rate per square foot for the body of the building, according to type—that is, including excavation, frame work and roof. After arriving at that value, the board and deputy compute the value of the other improvements. For example: If a stone-walled cellar, he applies a rate of 35 cents per square foot; concrete, 30 cents; about $100 for each hot-air furnace, depending of course on the size of the house; $280 for steam or hot-water furnaces; then he adds certain amounts for electric wiring, hardwood floors, hardwood trim, tile floors and wainscoted bathrooms and vestibules. The amount thus obtained is added to the structural value and provides a reproduction value at the going rates, less depreciation and obsolescence, if such exist for the assessed value.

For large buildings, such as theatres, office buildings and factories, the rate per cubic foot is applied. The rate again being determined by type of construction, a survey of the property is made for dimensions. They compute the contents and apply the type rate per cubic foot. The following scale of prices are some of those used:

Factories, concrete warehouses	8c. to	12c.	Subject to change for present reproduction value.
Factories, brick	12c. to	20c.	
Hotels	15c. to	60c.	
Theatres	25c. to	50c.	
Office buildings	30c. to	75c.	
Bank buildings	40c. to	$1.00	

After the adoption of the above system, it was found that it was not applicable to railroad values, and after soliciting the methods pursued in various large cities, we obtained from Jersey City a schedule of rates for railroad equipment, tracks, etc., which was finally adopted.

Tax and land agents of the railroads were called into conference. They agreed to furnish to the bureau of assessment blueprints, containing size and amount of tracks, size of all buildings on their various parcels, which enabled us to put this system into effect.

The first year we adopted this schedule we increased the value of railroad property in the City of Buffalo about three million dollars, and since that time railroad property has been increased from $43,000,000 in 1918 to $88,592,280 in 1923.

In addition to all the information that the deputy acquires, when making a survey, each deputy, in his respective district, keeps a record of all the land and buildings that are advertised for sale,

where the sale is mentioned. He keeps a record of all mortgages that are placed on the property and makes a record of the revenue stamps recorded on all deeds. This information enables him to determine very nearly the purchase price of the property sold. For example:

If a house was sold and the purchaser secured a mortgage for $5000 and there were five one-dollar revenue stamps placed on the deed, it is evident that the purchaser paid about $10,000 for the property, as it is necessary for the grantor to place on the deed fifty cents for each $500 he receives in cash for the property.

This information enables the deputy to keep informed on all the activities in his section, enables him to determine whether prices are increasing or decreasing, and to verify and assess property in proportion to what it is selling for, or its full and true value.

To give you some idea of the results obtained by this system, the following information will be of interest.

In 1915, the first year the system was in effect, the increase in taxable property was thirty-five million dollars. This increase was on land only (and really accomplished through equalization, rather than increase of prices), because the deputies, not having completed a survey of all the buildings in their section, the board deemed it advisable to adjust the land only.

In 1916, the increase was eight million dollars. This was a normal increase, the deputies not having as yet completed their surveys, the field sheet system on improvements was put back for another year.

In 1917, the increase in valuation was one hundred and forty-three million dollars. This increase reduced the tax rate from $29.84 to $21.67 per $1000 of valuation.

The benefits of this system are that it enables the assessors to visualize the property; it is a great time-saver, when assessments are under review; if correct in detail, it commands the confidence in the fairness of the assessors' methods; it enables the owner to compare his assessment with that of his neighbor's, and exhibits in detail why and what difference in value exists; it forestalls demands for reductions by owners, who might otherwise be inclined to misrepresent or exaggerate the facts.

I might say that before this system was adopted we had to get all the available space we could in the City Hall, and we had fifty or sixty men to answer complaints. Today two hundred and fifty would cover all the complaints of people that have a grievance on the assessment; and to show you how this system works, I can cite one case that just happened before I came away.

The City of Buffalo is trying to purchase one hundred and seven parcels of land. They are talking about putting in a new civic center, where the Statler Hotel is, which you probably know, and

the Real Estate Board went out to appraise the one hundred and seven parcels. They brought in an appraisal of $2,600,000. We checked up our assessed value against their appraisal, and we were only $300,000 away from their appraisal.

CHAIRMAN LINK: What was your assessment?

MR. BURKE: $2,300,000, and they appraised $2,600,000. Of course, with things the way they are now, they cannot buy for $2,600,000, the appraisal put on.

With this system we have our records in such shape that if a man comes in and wants to see his valuation, we hand him a sheet and he looks at it, and if he wants to see his neighbor's he can have it and look it over and compare it.

CHAIRMAN LINK: Gentlemen, we have such a limited time and so many to hear from, that while we greatly appreciate this paper, we shall defer discussion for the time being.

One of the discouraging features of our national work has been our inability to interest the second greatest city—Chicago—in the work, so far as their local officials are concerned. The older members here will remember that we have not, in the past, been honored by any great activity, but we are pleased to say at this time that we have one of the principal local officials here, who is not only interested enough to come here, but has become interested enough in his official duties to buckle into the great problem of trying to put Chicago on the map with a fair assessment.

I am going to call on Edward R. Litsinger, one of the members of the Cook County Board of Review—Mr. Litsinger.

MR. EDWARD R. LITSINGER (of Illinois): Mr. Chairman, Ladies and Gentlemen: I was indeed very greatly interested in the paper just read by Mr. Burke, and I am sure that not only I but the City of Chicago and Cook County received a benefit from the very instructive document which he read, and we may be able to utilize some of the information I gathered from that paper.

I will dispense with preliminaries. Chicago is practically eighty or eighty-five per cent of Cook County, Illinois. Illinois operates under a constitution adopted in 1870. All tax laws are based on that constitution. Prior to 1898 Chicago was assessed, as we might call it, or the assessing and collecting of taxes was done under the township system.

Just by way of information I might tell you that Chicago is made up of various sections or towns which were originally separate municipalities, but, by reason of the development of each of those municipalities, today it is the large composite metropolitan city known as Chicago.

The assessing machinery up to 1898 was carried on under the

township system. In 1898 that system, by an act of the legislature, was changed, so that Cook County elected five assessors and three members of a Board of Review. The assessors have charge of all of the original assessments in the county. The Board of Review, as its name indicates, has charge of reviewing the assessments of the assessors, which is done in two ways: first on complaint of the individual property owners, and, secondly, on a complaint originating from the Board of Review itself.

In 1916 the municipality of Chicago spent for operating purposes about 65 millions of dollars. In 1922 the city spent 125 millions of dollars. In 1923 the city spent about 145 millions of dollars; and in 1924 the City of Chicago expects to spend about 172 millions of dollars for municipal purposes. Inevitably the taxes had to increase to meet that additional burden.

The tax rate in 1916 was about two per cent on the full value. In 1922 it had jumped to four per cent on the full value, and because of this increase of one hundred per cent in the value of assessable property, quite naturally a great deal of property, principally personal property, but some real, as I will explain in a moment, gradually shrank from assessment.

On personal property the law requires in Illinois that every person file a complete and detailed and sworn schedule. The law on personal property was passed in 1870. Today it is a practical impossibility to find a sworn itemized schedule of all personal property that a person or an institution may possess Take, for instance, saving accounts: no savings account in Chicago, or at least in Cook County, is assessed. Under the present tax rate in Chicago, at eight per cent on the half value, or four per cent on the full value, a savings account of three per cent, of course, would be exhausted, and you would have to have a second savings account to pay the tax on the first.

Personal property in Cook County—and I will just state conclusions and not arguments—is not assessed on a legal basis, but it is assessed on an equitable basis, and what that equity may be depends probably upon the class of property, the nature of the business, and the circumstances of a collective set of cases or individual instances. The personal property situation in Cook County is so involved, so complicated, and I would say, so palpably bad, that wthout some drastic legislation, constitutional as well as statutory, I don't know how we are going to get a remedy for it.

Passing, however, from that to real estate, which is the subject of my short talk here—a statement on which I want to submit—we have the matter of buildings first, and land separately. As you know, and I take it that it applies in most of the cities, land is one unit of assessment and the building another unit of assessment.

In Chicago changes are constantly going on. For instance, on

the South Side we had for many years along Michigan Avenue, on many of the residential streets, mansions which cost hundreds of thousands and millions of dollars, collectively, to construct. Changes in the character of the population have taken place of late, and in many, many instances, where a building cost fifty thousand or a hundred thousand dollars to build, and was occupied by one of the foremost citizens of Chicago, they have been vacated and taken possession of by other classes of people, and today you cannot sell the entire property for the assessed value of the land alone.

We have that condition going on in Chicago from time to time. We have industrial changes going on, business encroachments, and other conditions which affect the value not only of the improvements, but the land as well.

Within the short time allotted to me I want to make this suggestion, from a paper which I have here, and I promise, Mr. Chairman, not to exhaust your patience in giving this.

In 1922 we had a total assessed value in Cook County, or in Chicago, of $1,266,502,000. The buildings on that land were assessed at $1,086,638,000. In other words, the land alone in Cook County or Chicago comprises over one-third of all of the assessable property in the city. Buildings amount to somewhat less than one-third. The total assessed value of all property in Chicago amounts to $3,332,000.00.

Land and buildings carry about seventy per cent of the assessed value, and seventy per cent of the tax burden of Chicago. The actual tax on land for 1922 amounted to $49,710,000. It is inevitable that the land proposition itself is of vital importance, and it becomes of greater importance each year, because of the increase in the tax rates; and I said before there was a hundred per cent increase from 1916 to 1922. Each time that there is a demand for additional funds to be spent, there is a campaign made in the legislature to increase the tax rate just a fraction of one per cent. However, the aggregate keeps going up very high, every year. As the tax rates increase, there is a constant corresponding or counteracting shrinkage in the personal property, because, first, personal property disappears entirely from the assessor's books; secondly, values, which on a one per cent basis or even on a two per cent basis may be somewhere near a fair value of a piece of personal property, is reduced to counteract the effect of the increase in the rates.

On real estate the same effort has been made to reduce the value of improvements, and where buildings are twenty or twenty-five years of age; where there is depreciation; where there is obsolescence; where the character of the property is changed, because the rates have been going up, the owners constantly appear before the Board of Review, demanding a review and a reduction of their assessed values.

My attention was called a couple of years ago to the Auditorium Hotel. The Auditorium Hotel was built in the World's Fair year. It was one of the great landmarks of Chicago. The land value has increased, the building value has decreased; the earning power of the property has decreased to such an extent that to write up the value or assessed value of the Auditorium Hotel at its present reproductive price would almost confiscate a great portion of that property, and the owners of that great hotel, having a sentimental value connected with the development of Chicago during the World's Fair era, are always before the Board of Review showing their balance sheets and loss of revenue, on account of the character of the improvement on the property.

There are other instances that I could cite, but which I will not take the time to refer to, but I will make this further reference. As Chicago grew together from the outlying districts toward a common center, values of land had been established in the various different townships. Those land values did not come in with uniformity, so that in the South Town you may have one basis of value, North Town another, in West Town another, and in the other towns the same kind of difference in values exists.

We are trying, and I am trying, since I have given some thought to the subject and some study to the matter, to avoid the possibility that land may shift or be thrown into the same category with personal property and buildings, making individual parcels subject to review and making assessments lacking in uniformity. If that condition ever comes to pass in Cook County, we shall have confusion upon confusion.

To avoid that kind of a situation, I have published this statement and submit it to you gentlemen for such thought—and I am going to leave some copies here—as you may want to give to it when you return to your different homes, and if any of the gentlemen have any suggestions at any time that you wish to forward to the Board of Review of Cook County, or to me as a member, I should be very glad to receive them.

(Mr. Litsinger thereupon read from the paper just referred to, which follows.)

PLAN FOR THE VALUATION OF LAND

PROPOSED BY EDWARD R. LITSINGER
Member Board of Review, Cook County, Illinois

(1) The proposition which I have to submit is based upon facts, some of which are matters of common knowledge, others of which are not so well known. But even the best known of the facts in question are so important that they cannot be too frequently re-

peated, too often considered. So that I shall formulate this statement step by step, including all the facts in question, but without meaning to imply that these facts are not entirely within the knowledge of this Board.

(2) My proposition is confined to the valuation of land — for purposes of taxation. I do not attempt to offer any solution for the impossible situation that exists in respect to the valuation of personal property, particularly of that class known as "intangibles". The only solutions that I can see lie in constitutional amendment and legislative enactments—and so beyond our power.

(3) I do not attempt, at least at present, to offer any solution for the difficult and unsatisfactory situation in respect to the valuation of buildings. We may well recognize our present methods as inadequate, and from this starting point proceed to consider improved methods, as soon as such may be determined. Though we must recognize that the extreme variety of buildings and questions of depreciation and obsolescence complicate the problem.

Importance of Land Valuation

(4) None of the above difficulties apply to the valuation of land. The field is perfectly clear here for making our system of land valuation as perfect as is humanly possible. No constitutional or legal changes are required. Nor are the different sorts of land so divergent but that their valuation can be reduced to definite rules.

(5) In limiting my proposition to the perfecting of our method in the valuation of land, I do not feel that I am seriously limiting its importance. The importance of the land alone in our system of taxation is shown by the following brief tabulation of the totals of the different classes of property, in Chicago only, valued for taxation as of 1922.

Land	$1,266,502,326
Buildings	1,086,638,962
Personal property	742,427,912
Capital stock	89,337,292
Railroad	147,577,054
Aggregate	$3,332,483,546

(6) The annual state, county, city, etc., tax paid upon that $1,266,502,326 of land in 1922 was approximately $49,710,000. This is a tax burden large enough to warrant every effort upon our part to distribute it with all the consideration, all the fairness humanly possible. And this distribution will, of course, be the more fair, as our method of distributing is the more perfected, which method of distributing is, of course, a method of valuation.

Present Chicago Method

(7) As a starting point for perfecting our method of valuation of land, let us review briefly what our method now is. As the basis for determining actual values, the principal consideration is usually given to actual sales. And if every property were sold at least once every four years, perhaps a mere record of such actual sales would form a complete basis of valuation for taxation. But comparatively few properties are sold once in four years. The value of those which are not sold must therefore be determined from the selling price of those which are sold.

(8) The method of such determination is at the foundation of the whole system of valuation for taxation. If that method be correct, then all valuations will be fair. If that method be incorrect, then many values will be unfair. If there be no method at all, then all values are likely to be too high or too low, and all of them to be, one way or the other, unfair.

(9) In 1907 the Board of Assessors of Cook County took a long step forward, so far as the down-town district was concerned, by adopting a definite system for determining the value of one property from the already determined value of another. This system (now generally known as the Martin system) consists, as do all such systems, of two parts:

First, a set of unit values for inside property, one figure for each block of street frontage.

Second, a set of formulæ for figuring lots of greater or less depth, corner lots, lots abutting on alleys, etc.

(10) Not only did the Board of Assessors adopt a set of unit values, but they published a plat of the downtown district, showing the unit values adopted. It was possible for each taxpayer to see and compare the unit value in his block with all the other unit values in the downtown district. Furthermore, the set of formulæ being also published, it was possible for each taxpayer to compute, from the unit value in his block, the exact valuation for the taxation of his property.

Methods in Other Cities

(11) Since 1907, most if not all the leading cities of the United States have adopted a similar method, comprising a set of unit values and set of formulæ for computing valuations of individual lots. What was progressive in 1907 applied to the downtown district of Chicago, is now commonplace throughout the country.

(12) In fact, Chicago now lags rather than leads. Most, if not all, of the other cities that have adopted a definite system of valuation, apply that system throughout the entire city in question. There are, perhaps, but one or two cities, just starting on the adoption of a system, which apply such system only to the down-

town business district, leaving the rest of the city to the more haphazard practices of the past. To be merely abreast of modern development in valuation for taxation, we should extend some sort of corresponding system to cover the rest of the city; eventually, all urban property within the County.

(13) While the extension of the system of unit values, and of the Martin formulæ, would thus be an important step forward, in bringing us up-to-date, it would of course be still better if we could take a second step forward, bringing us into a leading position, such as we occupied in 1907. It happens that we have an especial opportunity to do so at this time—which will require some more detailed consideration of the Martin and other systems.

Depth Percentages

(14) Let us take the question of depth. According to the Martin system, the unit figure is based on 100 feet in depth. If a given property be more or less than 100 feet, a percentage is laid down by which the unit figure is multiplied. In no two of the leading systems in force in various cities of the United States is this set of percentages exactly the same. All give more value to the land toward the front of the lot; but some accentuate such value more than others. There is more or less general parallelism between these leading systems, but variations in detail. In nearly every city operating under such a system, however, there is one set of percentages for varying depth, applying throughout the city.

(15) But such a uniform depth percentage, it is not difficult to see, is not proper to be applied to widely differing classes of land. For example, in a retail district it is clear that maximum value lies well toward the front of the lot. Without access to the street, without show window, the rest of the lot would be of very limited value in comparison. On the other hand, in a factory district the front of the lot is of little, if any more value than the rear. It is quite conceivable that a factory could be successfully operated without any street frontage at all, relying only on an alley for access.

Corner Influences

(16) We may next consider the question of corners. Each of the principal systems has its own and a somewhat different method of computing the value of a corner, as compared with inside property of equal frontage and depth. While these systems differ in detail, as in the case of depth percentages, yet there is a general parallelism. And here again, as in the case of depth percentages, whatever system has been adopted by any given city has, with one or two exceptions, been applied to all the property in that city. The corner influence has been calculated uniformly, just as depth

percentage has been calculated uniformly, throughout the city in question.

(17) But again, such a uniform corner influence, it is not difficult to see, if not proper to be applied to widely differing classes of land. For example, in an apartment district, it is clear that a corner fifty-foot lot is considerably more valuable than an inside fifty-foot lot; many more rooms in each flat can be given a street outlook; probably more flats can be planned. On the other hand, in a detached residence district, it is equally clear that a corner fifty-foot lot is but little more valuable than an inside fifty-foot lot; in each case a commodious house can be built, with all outside rooms, and with equal yard.

Classes of Property

(18) We may now draw some definite and important conclusions. Our first conclusion may well be that all valuation of land for taxation should be on the basis of a definite system, comprising unit values, and formulæ for computing property valuations from these unit values. Our second conclusion must be that these formulæ for computing property valuations from unit values should vary, according to the class of property concerned. There should be a different set of formulæ, as we have seen, for the following classes of property: Residential; Apartment; Commercial; Manufacturing.

(19) We may next enquire just how to determine to what class of property any section of the city or any individual lot belongs. This is a problem of the first magnitude, but it has just been solved. For it has not only been worked out, by the painstaking efforts of a group of experts; but also officially adopted by the Council. I refer, of course, to the splendid work of the Zoning Commission and to the recent Zoning Ordinance. This ordinance, very fortunately indeed, establishes the location and extent of the particular classes of property in which we are interested — as to valuation for taxation, viz: Residential; Apartment; Commercial; Manufacturing.

Proposed Method

(20) We have now all the data upon which to base a definite plan of action, for perfecting our system of valuation of land. Such a plan obviously comprises the three following steps:

(21) The first step is the systematic, orderly and official classification of all the land in the city. This is by far the most difficult step. And it has already been taken by the Zoning Commission. It only remains for us to take advantage of it.

(22) The second step is the adoption of a four-fold set of formulæ, one set for each class of property, as zoned—formulæ

covering depth percentages, corner influence, etc., etc. This is a highly technical matter, but I believe it can be promptly and easily handled by the method outlined below.

(23) The third step is the calculation of a set of unit values for one district after another, year by year, until the entire city is covered; and the revision of land valuations, based on these unit values and upon the above formulæ. This is a very large undertaking, but the larger it is, the more important it is. Moreover, it is not so large but that other cities have accomplished it without undue difficulty, and the difficulty will be minimized by taking one district at a time.

Steps to Put Method in Effect

(24) The foregoing being the plan in general outline, what I have to propose in detail, is as follows:

(25) First, I propose that this Board of Review and the Board of Assessors hold a joint meeting, devoted to discussion of this plan. This plan impresses me as so obviously to the betterment of our taxation system, so needed at this time, for the distribution of our unprecedented tax burden, that it can hardly fail of adoption in principle.

(26) Next, I propose that this Board of Review and the Board of Assessors constitute a small joint special committee to handle this particular matter, and that this special committee invite those organizations in Chicago to whom land taxation is of particular importance, and individual citizens, particularly qualified to advise upon such matters, including, perhaps, representatives from our universities, to form and sit as an advisory committee; and that the above special committee of the Boards of Review and Assessors, with the assistance of the above advisory committee, proceed to work out a four-fold set of formulæ, for the purposes above explained.

(27) Next, I propose that when such a set of formulæ have been worked out, the Board of Review invite the Board of Assessors to join in establishing a set of unit values for one district of the city after another, perhaps beginning with the confines of the downtown district (in which such a system is already in effect) and working outward, North, West and South. In this way the entire city will be covered uniformly and progressively, as rapidly as the establishment of these unit values can be effected. As each district is covered, a plat of that district should be published and distributed, showing the unit values established, as is now done in the downtown district.

(28) Finally, I propose that as fast as any one definite section has been covered by such unit values, the land be re-valued, according to such unit values, and subject to the formulæ applicable to the four classes of property respectively.

Conclusion

(29) This undertaking, so expressed, sounds somewhat difficult, yet it involves no great difficulty and can encounter no legitimate obstacle. Let me repeat the three principal steps involved. As to the first step, that has been accomplished by the Zoning Ordinance. As to the second, the data are all available here in Chicago; it needs only the appointment of a special committee and an advisory committee, to translate these data into the proper formulæ. As to the third step, of establishing unit values, this is a considerable one, taken as a whole, but taken piecemeal, it may be reasonably worked out over a period of time. All that is needed is to begin.

(30) The adoption of the plan above outlined would accomplish the following important results:

First, it would distribute with exactness, heretofore unequalled in American taxation, the burden of the tax on land.

Second, it would give our tax-paying citizens, who carry that burden, a sense of fairness in its distribution, which would be reflected in an increased willingness of each citizen to pay his allotted share.

Third, Chicago and Cook County would not only themselves benefit by such a modernization of their taxation system, in respect to land valuation; they would also set an example to the rest of the United States, all of which is confronted by the same problem and would be benefited by the same solution.

Chairman Link: I am asked to announce that tonight's session will meet at the Hotel Buckingham, across the street, at eight-thirty. Secondly, immediately after the adjournment of this session, as soon as we get through with our program, there will be a group meeting and photograph of the conference at this hotel.

Just a year ago now I had the pleasure of bringing from Denver our new assessor of that city and county, who was also county treasurer, and of saying to many members of this conference that he had the makings of one of the best assessors that we have ever had in the state. In the brief twelve months that have passed since he returned and went into our state and local conferences of assessors, and started a revamping and reassessing of the real estate and personal property of Denver, a recall was started upon the Mayor, and to unseat the entire administration, which I am glad to report failed by a vote of over two and one-half to one; and we now have with us Mr. Collins of Denver, who was sustained with the rest of that administration. He is now a full-fledged assessor, with an experience of ten years boiled down into one.

Mr. C. W. Collins (of Denver, Colorado): Mr. Chairman, La-

dies and Gentlemen: Needless to say, with the enormous experience of one year to my credit, I am not here to tell you a great deal. I am here to learn. I do think that perhaps you will be interested in the problems that I have encountered so far, and in the plans I have laid to try to improve matters. I presume our difficulties are very much the same as those of any city the size of Denver, which is one of the smaller cities, of three hundred thousand; but here is the thing I want to say first, that of the money that has been spent in my department since I came in, I feel that that which has returned the greatest yield was my expenses to this convention last year. I feel that I learned at that time more than I could possibly have learned in two or three years in office.

I remember that Mr. Burke of Buffalo took me up to his room and went thoroughly into the Buffalo system, and I gained ideas from that which were of very great help; and on the trip I visited many other cities and studied the plans of assessing, and from that we evolved a system in Denver which I think is different from any place else, perhaps going into greater detail than in most places, but something that we feel will give us a uniformity of assessment, which, after all, is the big problem in assessment.

Here is the situation: In Denver there has never been a complete revaluation of property on a uniform basis. Theoretically and legally, we make a reassessment every year, but as a matter of fact it is usually bringing forward the assessment of the year before, so that actually there is no reappraisal. Twelve years ago an assessor undertook to reappraise the business section, such as was just discussed in Cook County, Illinois. The business section was reassessed, using largely the Martin system that has been spoken of, as the safest. Since that there has been no reappraisal, and each assessor with his deputies would come in with their individual ideas as to the valuation, without any standard to govern them, and the assessments were made. The results are that there is a great deal of lack of uniformity, naturally, in the valuations.

A man comes into my office and says, "Why, my property is assessed twice what my neighbor's is, and my neighbor's property is just as good or better than mine." I do not doubt it; I quit doubting it. I always was willing to go out and investigate and make the proper adjustment, and that we do, but it has driven me to the conclusion that it is absolutely necessary to reappraise every piece of property in the City of Denver in order to get it all on the same basis; and that we are setting out to do. We are using a modification of the Martin system — the Buffalo plan — as we are pleased to term our plan, although it is a conglomeration of many plans; but the main idea down at the bottom is that we are going to appraise the property on the basis of a front foot, not only applying it to the business section, but to the entire city. After

having classified the buildings as to factories, office buildings, residences, warehouses, and so forth, we are reducing them to cubic foot values.

Now, in order to arrive at proper rates, we have a series of advisory committees. The Mayor started the precedent by asking the various organizations throughout the city — the Kiwanis Club, the Rotary Club, the Chamber of Commerce, and all the other bodies of that sort which were interested in civic welfare—to appoint members of a Mayor's advisory committee. This advisory committee was divided up into groups, each group being an advisory committee for one of our departments of the city, the idea being not that this committee would initiate ideas for the consideration of the department, but that they would consider ideas initiated by the heads of departments and give the reaction of the citizens, or to carry the ideas of the administration to the people who are being served. It is working very nicely. One committee, of course, has been assigned to my department—the department of revenue. We have taken up with that committee several important points of policy, and they have helped us to carry them out in a way that has been accepted favorably by the community. We have also asked the architects and builders organizations to appoint advisory committees on the establishment of cubic foot rates, for the valuation of property. This has been done, and that committee is a big help to us. A committee appointed by the realtors advises on the rate that is placed per unit on the land, after having accumulated statistics as to the sales values in all sections of the city.

Then we have a meeting with this committee that goes over the whole thing, so if there is any particular or peculiar condition, which would make the sales figures not representative of fair values, we adjust. The result is that we are able to equalize and in many cases materially raise the valuation, with the entire consent of those concerned. This committee as an advisory committee acts as a publicity committee, you might say, to sell the idea to the people.

Now, that is as to the real estate. As to personal property we are also trying to evolve means of getting better equalization.

In the case of real estate, the values placed are approximately seventy-five per cent of the sales value, which we feel really represents the sound value of the property. In the case of merchandise, we do not consider that to be the case, because it is a class of property that is being turned over rapidly. Therefore, if a man pays a price at this time, which we will say is above the average, that will maintain during two or three years' period. If he buys at that price, he also sells at that price; so that we do not feel the value of personal property is subject to a reduction, such as real estate is, on account of possible inflation.

I presume our situation in regard to intangibles is very much the same as it is elsewhere in the country. The best we can estimate, we are getting about one and one-half per cent of the intangibles on our rolls. I made a little tabulation December 1st, and I found that in the banks of Denver there were 167 millions of dollars on deposit. Our rolls showed three millions. Now, that seems like a bad situation, when we sift it down; when we analyze and think through to the conclusion of what the result would be, if we could know and get on our rolls the money, notes and credits. It takes the heart out of us in trying to enforce a law which, of course, is unenforceable, in the final analysis.

Suppose we were to go before the legislature and ask for a bill enabling us to examine the books and records of banks, thereby ascertaining who the depositors are, and placing the amounts of the deposits on the schedules and assessing them on those records. Here is the result: 2.8 per cent is the tax in Denver. There would be approximately three per cent tax on moneys in the banks, dormant money and savings accounts. Savings accounts there now draw three and one-half per cent. That is, in Denver, which has the lowest rate of tax anywhere in the state, but let us go to some of the other places. There are cities in the state that have as high as eight per cent. What would the result be with an eight per cent tax on money in the banks, if we were permitted to go into the banks and look at their deposits and assess them? It would absolutely disrupt business in the state.

Therefore, the business men are coming more and more, and tax officials, I believe, will agree with me on this, to believe that we have got to follow the lead of some of the rest of the states, like New York, for instance, which has removed the tax on intangibles and replaced it with an income tax or some similar tax.

Mr. Oscar Leser (of Maryland): Why not follow Kansas?

Mr. Collins: All right. The absolute futility of trying to assess such property simply shows that we must have some substitute, and we are working for that now.

I won't take any more time. I merely want to wind up by saying this, that the State Tax Commission in Colorado has been one of the greatest helps to the entire state, and we in Denver appreciate that especially, because unfortunately we have some men in office and some seeking office who are inclined to use tax matters as political fuel, and while that is the case it certainly requires some leveling; and I want to say a word in regard to Mr. Link; he is really the representative of the farm community in Colorado on the State Tax Board. In the face of the political talk of certain officials of the state who recommended to assessors throughout the state, that the taxation on land should be reduced, regardless

of how it stacked up with the rest of the property, that taxes should be brought down on land — and there are a great many votes, of course, out on the farms; in the face of all that Mr. Link has stood firm for absolute equality, regardless of the location of the property; and I say that wth a great deal of pleasure, because I think he has stood absolutely as a rock, and I should hate to see the State Tax Commission in our state removed or its duties in any way curbed or curtailed. I thank you.

CHAIRMAN LINK: Our time is drawing to a close. We shall necessarily have to be very brief. We have a very vital subject to several states, and a much mooted question always in the United States, although it applies to just a few states—the assessment of timberland—and I am going to ask Mr. Louis S. Murphy, Forest Economist, of Washington, D. C., to give us a few brief remarks.

MR. LOUIS S. MURPHY (of Washington, D. C.): Mr. Chairman, I will simply file this paper and give you a very few brief remarks on the point that I wanted to make, with reference to the assessment and taxation of forests under the general property tax. That is a subject that has not been given very much consideration, and I want to make the point especially that the use of sales in connection with the assessment of forest property leads to rather unconclusive and possibly dangerous results. This is because we are living in a transitional period between two eras, one in which the forests were not an exploitable resource and the land passed to agriculture, and the other where the land will remain in the forest growing class and the forest be produced by human effort.

These two conditions demand an entirely different basis of valuation, and if you use sales based on the exploitation use of forest resources, for the assessment of forests that are to be grown and produced by human effort, you get results which, as I see it, are largely responsible for the present unsatisfactory condition of the general property tax, as far as forest property is concerned. The program I have in mind is to try to put the general property tax on as sound a basis, with reference to forest property, as it is possible, by first systematically weeding out of it unrepresentative sales, which are now applied to forest properties; second, the interpretation of those sales which are representative but which are so scattered among the age classes—we using a technical term for different sizes of forests—as to be almost impossible of application to any large assessment, and to interpret those in the terms of a common denominator; and where there are no sales at all, to apply some sort of standard appraisal method, which may supplement the judgment, good or bad—usually bad—of the assessor who tries to get at forest values and who often gets it very wrong. I thank you.

THE MISUSE OF SALES IN VALUING FOREST PROPERTY, TENTATIVE PROPOSAL TO PROMOTE DISCUSSION

LOUIS S. MURPHY
Forest Economist, U. S. Department of Agriculture

The problems involved in valuing forest property seem particularly appropriate to bring up in connection with this round table discussion of the current problems of the local assessor. Those of you who are familiar with the tax situation, where there is any considerable amount of second-growth forest, know the perplexity of the assessor who wants to do his duty by the public and likewise wants not to be unfair to the man who has young growing timber on his place. Sales, consciously or otherwise, constitute very largely the basis of opinion as to practically all taxable value, even in the case of the average local man, who assesses by crude rule-of-thumb methods. Nevertheless, the common run of sales involving young forest growth appear to the average conscientious assessor to be ill-suited as a standard for valuing such of these forests as are not on the market, but are simply growing. So firm is he in this conviction that he usually feels justified in ignoring the current sales guide or at least of assessing forest property at very much under what such sales would indicate the property would bring if sold to a mill man. In the absence of any rule or basis for judgment in discounting or modifying such sales index as he has, glaring inequalities in assessments are the inevitable results, not only among forest owners, but between them and owners of other classes of property. This is but one of the perplexities which have arisen through too largely depending upon unmodified current sales data, as an index of valuation of forest property.

The particular point, then, that I wish to emphasize is that the majority of current sales of forest property, when used alone, are likely to be an inapplicable index to the value of forest property in general. This is fundamentally so, because we are living in a period of transition between two eras—one now rapidly passing in which forests were an exploitable natural resource, the land when cleared passing into agricultural use; and the other, already well under way, in which forests are being produced and grown under human guidance, the land in consequence remaining in practically the same economic status it had when covered by the original forests.

All of you no doubt will agree, in general terms at least, to the need for keeping assessment practice abreast of economic changes. Some of these changes come about so gradually, however, that the influences of the old order persist, long after that order itself has

ceased to exist, in any large measure. Thus, lumbering formerly was regarded simply as a forerunner of farming. There was a time when, to provide sufficient land for farming, the forest was deliberately cut down and destroyed. Subsequently, the demand for lumber and forest products was such that the forest could be cut and fairly well utilized, as clearing for agriculture proceeded. More recently, the demand for forest products has been so great that the land has been cleared of timber much faster than it could be absorbed by farming. The full significance of this situation has not been evident until very recently. It has been obscured by the fact that much land, formerly cleared and farmed in the regions which were first to be settled, has been abandoned and grown up to young woods again, while the equivalent of the land so abandoned has been cleared and put into farms in the more recently lumbered regions. Indeed, a certain amount of this is going on all the time and will continue to do so. The really large economic demand for more raw farm land, however, has ceased, according to competent authorities. Agriculture has entered a phase of development where greatly increased crop yields per acre are being sought, rather than greatly increased acreage, as formerly. This points to a possibly progressive decline in the demand for raw farm lands. In contrast, however, the amount of land being cut over for timber is proceeding, if anything, at an accelerated rate.

Notwithstanding this disparity between the diminished economic demand for raw land for agriculture, and the steadily increasing supply of cutover forest land, we find it the practically universal rule to assess this land, as soon as the timber is removed from it, at an agricultural value. Indeed, some states go so far as to anticipate removal of the timber and assess the land as potential agricultural land while the timber still stands on it.

It is always possible to find a scattering of sales of cutover lands to would-be settlers. These sales, however, are insignificant in point of acreage, compared with the total area of cutover lands of which they form a part. Furthermore, this sort of random settlement under the economic conditions above indicated is nothing short of a venture. The sales, in consequence, are virtually speculative sales. Like other speculative sales, their influence on neighboring property values should be closely circumscribed or, better yet, wholly eliminated. Notwithstanding these circumstances, settlers' sales are almost invariably taken as a standard of value for the entire body of cutover lands.

The use of these unrepresentative settlers' sales, as a criterion of value for all cutover lands, is no doubt accounted for, not only because of the obsession that cutover lands are necessarily and always but a transition stage of agricultural development, coupled with the desire of tax officials, in common with others, to help

along such development and thereby increase the state's prosperity and prestige, but because of the need for maintaining the tax revenue in these heavily lumbered sections and, most important of all probably, because of the entire absence of transfers of land, or of insufficient volume of transfers to buyers contemplating forestry, to indicate the fair market value of and demand for such lands for that class of use to which they are best adapted. The chief reason for the lack of forestry sales is, of course, that the land is already held most largely by those in the best position to put it to growing new forests, namely, the lumbermen. Having realized on the original timber growth they should be interested in holding the logged-off lands for a re-growth, if it were reasonably assessed and taxed.

Excessive assessments upon cutover lands, chiefly suitable for forest production, thus tend more strongly than any other factor to completely prevent such production from getting started. This is unquestionably the most widespread and dominant tax evil to be encountered, especially in the South, the Lake States, and the West.

Coming now to the growing forest, we have here, in large measure, a duplicate of the traditional conditions which have been shown to prevail with respect to cutover land. Forests, from the time of the Pilgrims' landing down to the present, have been valued chiefly for the products they would yield, if cut down and taken to the sawmill, pulp mill, or wood-working plant. All forests —mature forests and growing forests alike—thus are commonly placed in the same economic use class—the exploitation class—in the same way that all cutover lands have been shown to be placed in a common agricultural use class. The economic differentiation in use, however, is, generally speaking, not so clearly discernible in the case of forests as in the case of cutover lands. Such a differentiation, nevertheless, exists and is becoming more and more manifest, as time goes on. It thus is evident, even to a casual observer, that there is a very definite limit to the exploitability of immature growing forests. Exploitation carried beyond that limit would soon glut the market with the low-grade products, characteristic of such forests, and force prices down below what it would cost to cut and haul them to market. Before the point of negative exploitation value could be reached, however, a second economic use value would assert its influence and cause such forests to be withheld from exploitation and be allowed to grow to a larger size in order to produce a higher grade and more widely competitive product.

This second type of use value, while it is now much less clearly recognized, is much more widely representative and characteristic of the general run of immature, growing forests, than is the exploitation use value. Its character can possibly be most readily comprehended, by assuming it to be the price which a purchaser

would be willing to pay for a forest property acquired subject to the restriction that no forest growth would be cut from it, within a given period of years following the date of purchase. The price to be paid for the property under those circumstances would obviously be entirely dissociated from the value of the products it would be possible to cut for immediate exploitation and would be based, instead, upon the probable value of the class or classes of product the property could be expected to yield, at the expiration of the restricted period, and also upon the probable outlays on the property in the meantime. In other words, it would be a strictly productive or capital value.

With these two classes of use values associated with the growing forest, namely; exploitation value and productive value, it is a matter of considerable importance which one of them is chosen as a basis for valuing the general run of forest-growing property. In theory, at least, exploitation value would seem to have no place whatever in valuing forest-growing property, when the forest was not being exploited, but was simply growing, i. e., producing. In practice, however, exploitation value seems to be rather freely used because it is the dominant sales value. Owners of immature growing forests, rather than let them go at investment sales prices, usually prefer to keep them as an investment. Consequently, most of the *bona fide* investment property never gets onto the market as such.

Forest-growing property, thus, is on a par with property in the business centers of many cities, which likewise changes hands but infrequently, and sales data on its value, as productive property, are thus either lacking or insufficient. In the absence of such sales, where business property is involved, however, various methods of appraisal are resorted to, as you know, which aim to approximate productive market value as closely as possible. And such values, so determined, are accepted both by the public and by the courts. There is no reason, consequently, why similar means should not be used in valuing growing-forest property, in place of the at present unrepresentative sales, nor why such means should not find as ready acceptance in the one case as in the other. That such values will, in all probability, not only be accepted but welcomed seems evident. The conscientious assessor referred to at the beginning of this discussion very clearly reflects such a favorable attitude of the public, when he ignores the current exploitation sales value as a guide and substitutes for it his own judgment as to what the productive value of a forest-growing property should be. Having no really adequately organized basis for that judgment, however, the resultant value becomes simply a guess. If, therefore, he is called to account for it, he cannot convincingly justify it, or reconcile it with the sales data he has discarded. He

is, in consequence, suspected of playing favorites when, in fact, he has simply tried to be honest.

The assessment of the growing forest, then, is the second most important phase of the forest property assessment problem, which reacts detrimentally on forest production generally. It is probably the dominant cause of present-day complaints against the property tax in the Atlantic Seaboard States, particularly, and in certain, at least, of the Upper Mississippi Valley States where a promising second growth has been developing for upwards of half a century.

The third phase of the forest assessment problems is that of the old mature forests, the existing stock of reserve timber that must somehow be made to last, until we can grow a new supply to take its place. By and large, these probably are not now being overvalued. However, assessments have increased enormously in recent years and are still being increased. These mature forests are clearly a capital investment and taxable. This one point, however, needs to be borne clearly in mind in taxing them. The ordinary manufacturer inventories once a year his stock of raw material on hand, and is taxed on that inventory value. He, nevertheless, may utilize, during the year, many times the amount of stock inventoried; but on this excess he pays no tax whatever. The lumber manufacturer, on the other hand, cannot operate on any such quick turnover basis. He must lay in, in advance, a sufficient stock of raw material, i. e., standing timber, to last him for as many years as he expects to run his sawmill, in many cases. A portion of this stock, thus, must necessarily appear repeatedly in each annual tax inventory, throughout the life of the business. There is, obviously, no way that the owner of such a class of raw material can properly be placed on an exactly equal and comparable tax footing with the ordinary manufacturer. Nevertheless, some definite and fixed rule of valuation, which takes into account the element of time involved in the deferred return of such capital investment, should at least be provided; such, for example, as that now in use for valuing mineral reserves.

This phase of the assessment problem is probably now most apparent and pressing only in restricted localities, where the end of the locally taxable timber reserve is in sight. The adoption of correct principles in these, as in all other localities, where mature timber is involved, however, is chiefly essential to safeguard from over-taxation such part of the original forest as might properly and profitably be left to grow for a period of years following the first cutting, and likewise such trees as might be left for reseeding purposes. In the absence of these safeguards, the mature forest will be slaughtered, continuous forest production interrupted, and forest renewal greatly retarded.

To sum up, then, the several points thus briefly touched upon as

weak points in the present-day application of the general property tax to forest property are as follows: (1) the use of unrepresentative sales data; (2) the lack of proper organization and coordination of such sales data as is representative; and (3) in the absence of any such representative sales data, the failure to provide, as a temporary substitute, suitable appraisal means for setting up relative values, not only as between individual forest properties, but as between forest property in general and the various other general classes of property. The correction of these difficulties would doubtless considerably relieve, for the time being, at least, the more acute phase of the tax problem which the general property tax imposes upon forest property.

The means of effecting these corrections is another matter. Only general suggestions have been made looking to that end. To attempt to elaborate on them in detail would take more time than was placed at my disposal for this discussion. I shall, however, be glad to talk over such details with anyone who may be interested.

Chairman Link: If you will bear with us just a moment, I wish to say again that Assessor Burke of Buffalo, New York, will be very glad to hear from any of you and transmit any of his forms of blanks that any of you may desire.

Now, I am going to omit, on account of the lateness of the hour and the anxiety to get away, anything further, except one brief statement, which will end this session, as we opened it, with the importance of education.

I am going to call on one of our splendid tax commissioners to explain the wonderful results he has obtained in Connecticut in the absence of official authority. Mr. Blodgett of Connecticut.

Mr. W. H. Blodgett (of Connecticut): Mr. Chairman, Ladies and Gentlemen: I am going to be very brief. Everybody else said that; why shouldn't I follow suit?

I think we need to put across one proposition, and that is, there is such a thing as arriving at valuations by employing scientific methods. Most everyone is anxious to discuss this subject of property tax; and right here I want to divert long enough to say that I hope the property tax will, so long as this association continues and these conferences exist, receive attention at the hands of this association.

What Mr. Link has had to say with reference to its importance in Colorado is equally true in Connecticut, and I have no doubt is quite as true in other states. This being so, we can afford very well to engage in these discussions. I have learned very much here this morning.

Now, as to the method by which to arrive at scientific relative valuations. If we should appoint a committee from this associa-

tion, from those now in this room, to ascertain the relative value of this building we are in, and to compare that for assessment purposes with a dwelling of some worker in the shop, or with a garage, we should be put to a task, and it would be a difficult one. It would require that we should understand replacement costs, the cost of labor and material in St. Louis, Missouri, in order to arrive at anything like a relative valuation. That is what our friend is talking about in Chicago, and that is what our friend referred to in Buffalo. But our people who are paying the bills do not understand that there is such a thing as a scientific method of arriving at valuation. They take it as a fantastic idea. That is one avenue or line of educational work that I think is essential in arriving at anything respectable in regard to this property tax.

The old idea, so-called, in Connecticut is the guess-and-be-damned method of letting assessors go out and say: This hotel is worth so much, this farm is worth so much money. It arrives at chaos, and the taxpayer interprets his tax troubles in the light of his experience only. He complains of his own bill. He does not complain of paying taxes as such, provided his neighbors are paying on the same basis as he pays. If you can show him that—and you cannot show him, without maintaining satisfactory records—if you can show him that he is paying on the same basis as his neighbor, he will pay willingly, and he will pay high taxes too for roads, schools, and many of the other activities in which his community may be engaged.

So that I think we have to put this idea of scientific methods across.

Now, our friend from Chicago referred to a very important thing when he spoke of the escape of personal property. In Connecticut we apply the current rate to intangible personal property that is applied to lands and buildings, but with us, as with him, they do not list all personal property for taxation. My observation in dealing with the subject leads me to the same conclusions he has reached, that as the rate goes higher we get a diminishing return on this class of property. It is going out of the Connecticut tax lists as the rates increase in our municipalities.

Now then, that ought to teach us something. It ought to place upon us the urge to build a large tax basis at full value, in order that the rate may be at the minimum. There is no other way to cure that difficulty that I know of. That will not cure the difficulty, but it will tend to cure it.

I agree with the proposition that intangible property cannot be taxed at local rates, and we might just as well recognize that at one time as another. It has come to be a common experience. We recognize it in Connecticut, and we are getting more money from the taxation of intangible property at a low classified rate than we ever did on the higher rate.

Now, then, when expenses of government locally were low, these problems were not so pressing, but as they mount and as they grow they become so urgent that attention should be given to them.

With the idea of stimulating thought on this subject, I caused to be published in Connecticut some eight or nine pamphlets on various phases of the property tax and the administration of the law. I did not write these pamphlets myself; I had them written by men within the state who were outstanding men, and public-thinking men, so that when anyone writes a letter to me with reference to the duties of assessors or makes complaints about his assessment, I write him a letter and enclose one of these pamphlets. They are brief and bear upon the duties of the assessor. If he writes with respect to inheritance taxation, we have a pamphlet on that subject, written by a man who is known in the state because of his public spirit and interest in public questions. This pamphlet goes to him, and by that method we are attempting to sow the seed everywhere among the people who are thinking on these particular subjects, and it appears to me that in the end we are making some very marked progress.

I do not want to take up any more of your time, but the pamphlets so written have revealed to me the possibilities in them.

There is another proposition, a very practical one. It is my own opinion. I get many letters with reference to tax reform. You know I am not a reformer. That is just what I mean. I do not permit anybody to say I am engaged in tax reform. I say it is refinement. In our present method of taxation I do not state the limits to which I would go, if I had full authority on these refinements, but they are not reforms. We need refinements, we need progress that we can sustain, rather than a large aggressive campaign to turn everything upside down. I believe with a campaign of education and with a legislature that will follow a healthy public sentiment, we shall arrive somewhere at respectability in the administration of this property tax and in the solution of these problems. I thank you.

CHAIRMAN LINK: Ladies and Gentlemen: Just as a matter of encouragement, in getting personal property, I will state that according to the record of assessed valuations in Colorado, we get over 23 per cent of our total valuation on personal property. That will be of some little help to those that are discouraged.

This is the end of the session, and I have had to cut out some of the discussions for lack of time. Do you wish to spend a little more time, or would you rather adjourn now?

ADJOURNMENT

SIXTH SESSION

Wednesday Afternoon, September 17, 1924

President Bailey: Kindly give your attention. While we are waiting for the regular program scheduled for this afternoon, I may say that it is customary each year to have a paper containing a digest of the legislation of the states. I wonder if we had not better do that now while we are waiting.

Secretary Holcomb: Gentlemen, I hesitate to interrupt the program, but if you desire that the digest of legislation be roughly skimmed over, I will attempt to do so. The President thinks it is quite important.

President Bailey: We will go on with the program. Mr. Belknap will take charge this afternoon.

Mr. W. B. Belknap, presiding.

Chairman Belknap: The meeting tonight will be in the hotel across the way, the Buckingham Hotel, in the big ballroom. That meeting will be at eight-thirty o'clock, and we wish that you would spread that news around, because a lot of people will not realize that the place has been changed for the meeting.

The topic of discussion this afternoon is inheritance taxes. We have already had something of a discussion of inheritance taxes. I find that there is considerable interest in it this year, and a good deal more sympathy shown to the people who are trying to work some order out of the chaos than has existed in the past.

I have been reminded several times, since I tackled this question of inheritance taxes, of a friend of mine who has a salt mine down in Louisiana. If you point out the evils that may occasionally accrue under the present inheritance tax system, a lot of the tax men say that these are just exceptional cases, and that we ought not to talk too much about them, because you get people all excited. This friend of mine in Louisiana, talking one day, said, "You know those darkies down there in Louisiana are just too superstitious for anything. Every time we kill a darkey off, they won't go back to work for two or three days." And, he said, "We had a bad accident about three weeks ago and killed seven darkies, and we haven't been able to get any of them to work since." He said, "I wish they were not so superstitious."

That is a good deal the way people talk about the inheritance taxes. They do not really know how dangerous the situation is. They think that people are just superstitious about it. If you get hit once right hard yourself, you are apt to be superstitious.

We are fortunate this afternoon in having two interesting addresses ahead of us. The ball game seems to have had a very great attraction for a certain portion of our members, but I believe they made a mistake. I believe it would be more fun to remain here, taking everything into consideration.

I am going to open this ball game by introducing Mr. Atwood, who is going to talk to us on some subject which he will name himself.

INHERITANCE TAXES AND THE PUBLIC

ALBERT W. ATWOOD
Staff writer, *The Saturday Evening Post*

Mr. Albert W. Atwood: Mr. Chairman, Ladies and Gentlemen: The subject assigned to me—Inheritance Taxes and the Public—implies a possible knowledge of public opinion or popular psychology, which I hasten to disclaim. Perhaps the officers of your association who drew up the program made the mistake in this case that Freddie, the college student made, in writing to his father, a mistake which he was obliged to correct in the following letter:

> "Dear Father: I am sorry to say that I was mistaken when I wrote last week that the Prof. had said that my abilities were mathematical. He said that they were problematical."

Certainly it would be presumptuous for a writer for a general and popular publication, who would feel unpleasantly stilted if described as a publicist, to instruct this gathering on administrative, technical or legal aspects of the subject; and equally arrogant to elucidate theory to an association, which contains the leading theorists on taxation in the country.

The function of the present speaker, I take it, is to talk right out loud in meeting, because a journalist sometimes has the advantage over a professor or a government official, of a more vernacular manner of speech, or a less conventional mode of presentation, and of more freedom of emphasis. I bring to you no new principles, probably no new thoughts, but perhaps a different way of looking at the subject, and certain data which perhaps the journalist is more apt to observe.

The public attitude toward inheritance taxes is, of course, favorable in the extreme. I doubt if there is any other fiscal or governmental measure of any kind so wholeheartedly approved of by public opinion, or whose advantages have been so exaggerated and

distorted in the public mind. Ask any person at random, provided he has had no direct experience in the subject-matter, and the reply will be most laudatory. Even among the very rich, only a few will openly criticize the tax. Yet I confidently believe the extraordinary esteem in which public opinion holds this tax—I am not talking about its actual merits, but of its supposed merits—is based largely on ignorance, exaggeration and sheer hypocrisy.

I have often been told by tax officials that the inheritance tax should not be considered as a regulator of fortunes or as a means of equalizing wealth; that such considerations do not belong within the science or realm of taxation. At the meeting of the Academy of Political Science in New York last April, former Lieutenant-Governor Bliss of Rhode Island said that taxation should not be used to regulate the distribution of wealth, unless the fact and policy of so doing be frankly stated. Mr. Belknap said he thought the corrective end of curbing large fortunes had been largely lost to view, and he did not believe the Federal Government could have any such policy in mind. On the other hand, at your White Sulphur meeting last September, Professor Adams said of the spirit and purpose of the income tax—and I am sure he would say the same of death taxes: that it was "a rather blind groping of democratic peoples to reduce and relieve the striking inequalities in wealth and income. The two forces, democracy and capitalism, are irreconcilable, without some corrective equilibrating machinery, such as progressive taxes."

The agreeable and able gentleman who speaks next may deny that the administration, of which he is a part, wishes to use the estate tax to relieve the inequalities of wealth. The present administration may not—we all know it does not—believe in any such thing. But here are the facts; against the opposition, implied if not openly expressed, of the President and Secretary of the Treasury, with only two or three hours of one-sided debate, and as far as the speaker knows, no public or even private hearings, Congress increased the estate tax from a maximum of twenty-five per cent to forty per cent. Does any man in his senses maintain that Congress would or could have taken such action, with state taxing authorities mostly anxious to have federal estate taxes done away with altogether, unless public opinion favors the use of high inheritance taxes, to relieve, as Professor Adams says, the inequalities of wealth and income? Certainly there is no fiscal reason for increased rates; there is every fiscal reason against it. Why, then, was it done? The administration opposed rather than asked for this result.

Now, gentlemen, may I speak bluntly? As tax officials and actual tax experts, you say there is no more place for a scheme to relieve the inequalities of wealth in the science of taxation than

there is a place for religion. That may be good science, but very poor politics. It seems to me you must fight directly the ignorance, the exaggeration and the hypocrisy which has led public opinion into a position where the present "well-nigh intolerable situation as to inheritance and estate taxes" is possible.

In the first place, then, might it not be well to educate the public that high estate taxes, as "corrective and equilibrating machinery," deal only with results and not with causes, that in the long run the people can expect far more from elevating the plane of competition, from protecting the weak and prosecuting the guilty?

Should not the public be told that any estate tax rate, high enough to reduce swollen fortunes, is also high enough to act as a clumsy blunderbus; that once rates are high enough to reduce fortunes, the real force and incidence of their operation depend almost entirely upon purely arbitrary and accidental factors, such as fixed periods of time for contemplation of death, upon market conditions at the moment, upon the character of the investments held, upon whether liquid tax-exempt securities or coal and coke lands, traction companies, and the like form the bulk of an estate?

Should not the public be told that when inheritance duties become high enough to relieve the inequalities of wealth and income, the results perforce must be grotesque in the extreme? The idle and dissipated son of a bootlegger may pay less than the son of the most useful and socially serviceable manufacturer, even though the son himself, in the latter case, may have done as much as the father to build up the business.

Should not the public be told that by far the most striking result thus far of the extraordinary widespread use of inheritance taxes in this country has been the amazing complexity and degree of unevenness of their application, all of which is accentuated, the moment any rate high enough to relieve the inequalities of wealth is introduced?

The attempt to bring about social justice through inheritance taxes has thus far been about as hit-or-miss as the man who, when the steamer was only a few feet from the wharf at Nantucket came running madly from the dock gates, shouting to the officials to wait a minute. Without pausing in his stride he flung his bag on the boat, leaped desperately, and landed on the deck with a crash. "Good," he gasped. "A few seconds later and I should have missed it." "Missed it!" exclaimed a passenger. "This boat is just coming in."

Consider an actual case: We will call him Mr. Smith, who, with three or four thousand dollars, started thirty-one years ago to manufacture an exceedingly valuable article, now in worldwide use. The company now employs fifteen thousand people, at good wages; nearly sixty per cent of the earnings have gone back into

bricks, mortar, machinery and the like. This man has worked with tremendous energy and still does. The profits have been large. Mr. Smith, who owns more than fifty per cent of the stock, has spent only a very small fraction of his income on himself. He has given it to charity or invested it in high-grade tax-exempt securities. Yet under the new forty per cent federal estate tax, if he should die today and his estate should sell all his outside investments, some ten millions in all, it would still be four or five millions of dollars short of enough, which could only be had by letting go, or by sacrificing a controlling interest in the company.

Carnegie once said a man who dies rich dies disgraced. What nonsense! If a man has accumulated a fortune honorably, is it any more of a disgrace to die before he retires and spends it than after? If Mr. Smith had sold out to a Wall Street banking syndicate five or six years ago for twenty-five or thirty millions, and reinvested the proceeds in liquid, tax-exempt securities, he could die today and there would be no difficulty at all in paying the taxes. What a grotesque instrument for relieving the inequalities of wealth the inheritance tax is!

The trouble is that inheritance taxes on the surface seem so simple, so non-controversial, and so appealing to one's sense of justice that they have been applied with a careless abandon, and as a result most of the talk about them is mere parrot-like patter. Why, most people don't even know that we have such taxes now; either their ignorance is so dense or their hypocrisy so colossal! Nothing is more common than for so-called progressives and radicals to come out with a loud shout for heavy taxes on large estates, just as though we did not have them already. The platform on which Senator La Follette is running for President has the brazen affrontery to say: "We present our program of public service," (then fourteen different items) including "rapidly progressive taxes on large estates and inheritances," as though a month or two before, President Coolidge had not signed a bill containing a forty per cent tax on all portions of an estate above $10,000,000.

Why must we suffer from bunk in most discussions of the inheritance tax? Did any of you ever read a speech in Congress, or an article, or a book in fulsome favor of higher death duties, that did not begin and generally end by quoting Andrew Carnegie in their favor? Even Chairman Green, of the Ways and Means Committee, in his closing speech, at the end of the session, in defending the revenue bill, quoted Carnegie in his explanation of the increased estate tax. Yet doesn't Judge Green know now that Carnegie gave away 350 millions to various foundations, thereby wholly avoiding inheritance taxes on that sum? I do not say with that intention, but with the result that not one cent of estate or income taxes either has been, or will ever be paid on that 350 millions.

Mr. Hershey, the chocolate manufacturer, who a year or so ago gave what was said to be sixty millions to a home for orphan boys, in an interview said: "The inheritance of fortunes is a bad thing," but by giving it away, he thereby prevents the payment of a cent of inheritance taxes.

Why is there such enthusiastic advocacy of carrying these measures to an extreme, which either defeats themselves or operates with such marked unevenness or inequity? Senator Smoot said in April last, in referring to the 1921 law, that "When we sat around the table and the Senate Finance Committee imposed a tax of twenty-five per cent on estates, every one had in mind Mr. Rockefeller. He was discussed around the table; but he is not dead yet."

No, he is not dead, and he has given away half a billion to charity, and probably as much to his children, on neither of which will inheritances taxes be paid.

Even if the new gift tax proves fair, just, practicable and constitutional, which is a large "if", is it a wise policy to educate the rich to allocate most of their incomes into provision for death taxes? For, at rates from thirty to forty per cent, as at present, above five millions, the so-called inheritance tax ceases to be merely a death tax. Such a tax becomes a capital tax during life. The captain of industry must shift and change and distort all his normal plans and operations to meet the situation. He must inevitably tend more and more to get out of industry and into a retired, liquid, tax-exempt security condition, and to think of little else. We are passing into a period where provision for death taxes will gradually cast an ever-widening black shadow into the most useful of lives. Is it wholly wise?

In conclusion, I can only say that this conference, or the one to be held next year, should publish a report that brings out a few clear principles, like those in Senator Aldrich's Monetary Commission report some fifteen years ago. There is information enough in the printed proceedings of the National Tax Association, but they are not coordinated; nor are they sufficiently advertised; nor are they headed by a big name, like that of Senator Aldrich. What is needed is an authoritative work from which Senators and Congressmen can quote, instead of the old patter from Carnegie and Roosevelt.

If overdoing the death taxes produces bad results, they will become patent in time to the whole people. Perhaps the people will not change their views until a great deal of damage has been done, as in the case with railway regulation, but in the long run the people are competent to judge.

It is up to this group to furnish the public with the facts upon which judgment can be reached.

CHAIRMAN BELKNAP: I think we are very unusually fortunate in having a paper from one so thoroughly disinterested as Mr. Atwood, and yet so thoroughly sane. The toatstmaster always has certain advantages, and I have a certain advantage here of being able to talk back. He quoted me as saying this spring that the corrective feature of inheritance and death taxes had been rather lost sight of. I did say that, but I qualified it pretty thoroughly, as any good scientist today always does. You can always tell a scientist from the man in the street. The man on the street will say that something is true or not true but the scientist will always leave himself a hole to crawl into or crawl through and get out. Undoubtedly, from the beginning, there has been a mixed desire in passing death taxes, which I believe to be true; what I said was undoubtedly that there were two distinct ideas in passing them: one to regulate fortunes and the other to raise revenue.

I said that as time went on, the regulating feature was lost sight of directly and the revenue feature was more emphasized, but of course the reason that the politicians have used this form of taxation to raise revenue is that very underlying thought Mr. Atwood points out, namely, that the people have this blind groping, which Professor Adams speaks of, which prevents the objection to death taxes that is always raised to other taxes.

It is the same old story, that the general public has the view that death taxes only touch the man of great wealth, and therefore, unless they are men of great wealth, they do not worry, and very few, comparatively, of the men of great wealth worry. They usually take care of themselves pretty well; they are smart and can hire good lawyers, and so on.

It is only through the realization, as Mr. Atwood pointed out, of what is going to result from the heavy taxing of great wealth, and how it is going to affect the rest of us, that we are going to bring the thing home to people.

I am glad Mr. Atwood's article is going to be printed in our proceedings, and I hope we can give it due publicity. I believe it will do as much good as anything that could be written.

We have now finished the first inning, and I am sure everybody is enjoying the game. As umpire, I am going to call the second inning and introduce the most distinguished visitor to the conference, one who comes from Washington and who is welcome in every way that we know how to make him welcome, and who will give a paper that I know will be interesting, not only to us, but to others who will have a chance to read it later.

I take great pleasure in introducing Mr. Garrard B. Winston, Under Secretary of the Treasury of the United States.

MR. GARRARD B. WINSTON (of Washington, D. C.):

STATE AND FEDERAL RELATIONS IN INHERITANCE TAXATION

GARRARD B. WINSTON
Under Secretary of the Treasury of the United States

President Coolidge, in his message transmitting the Revenue Act of 1924 to Congress with his signature, suggested the advisability of calling a conference of the taxing authorities of the states and of the Federal Government, to give consideration to some comprehensive plan of division of the field of death taxes between the various states and the Federal Government and the elimination of overlapping and unfair taxes. In appearing before you today, I do not represent the Administration, nor do I expect to advocate a solution of the problem. It is my desire simply to present to you the importance to us all of an economic consideration of the taxing question which is involved.

I am, of course, more familiar with federal legislation than with your state laws, with which we in the Treasury do not come in direct touch. So I shall lay more emphasis on what I know and will not go into the details of state laws.

The history of death taxes with the Federal Government is short. We have occupied this field of taxation four times in our history; and each time, until the present, we have relinquished the field to the states, when the particular emergency for which additional taxation was required had passed.

In the early days of the Republic, to obtain money with which to pay in part for the Revolutionary War, a stamp duty was imposed on legacies or on any share of personal estate received on death. This tax was paid by the beneficiary, and amounted roughly to two-tenths of one per cent. The act was passed in 1797 and repealed five years later, in 1802. The yield to the Government from this tax cannot be separated from the revenue from the sale of stamps for all purposes, which averaged about $250,000 a year.

During the Civil War, Congress imposed a very moderate inheritance tax. The act was passed in 1862 and repealed in 1870. Its average yield was about $1,500,000 a year.

During the Spanish War a tax was levied on the transfer of personal property by death, at rates which, in the case of direct heirs, reached a maximum of 2¼%. The law was passed in 1898 and repealed in 1902, and subsequently certain taxes collected under it on charitable bequests were refunded. The greatest amount of revenue derived in any one year from this tax was something over $5,000,000.

The estate tax was resorted to in 1916, when the maximum rate imposed was 10%. In March, 1917, this rate was increased to

15%, and in October of that year to 25%. In the Revenue Act of 1924 it is raised to 40%, with a credit for state taxes. The revenue received from this tax has been as follows:

1917	$ 6,000,000
1918	47,000,000
1919	82,000,000
1920	103,000,000
1921	154,000,000
1922	139,000,000
1923	126,000,000
1924	102,000,000

It is estimated that in 1925 the revenue from this source will be $114,000,000, an increase of $12,000,000 over the previous year.

You are familiar with the examples which have frequently been cited of how the various states and the Federal Government, under existing laws, can take more in death taxes than 100 per cent of the estate. This is brought about, under our complex system of property ownership, by certain double or triple taxes, imposed by states which make both the situs and domicile the basis of the taxes. I need not go into this matter in detail. It is sufficient to affirm that the inheritance tax levied by the state of the domicile of the decedent, plus the inheritance tax or taxes levied on some of his property by other states, in which such property is situated, plus the federal estate tax, is a most serious burden and approaches, if it does not reach and pass, the limits of taxable capacity in this field. The problem assumes, therefore, a more serious form, than simply the inconvenience of paying a tax to several jurisdictions, or the unfairness of overlapping or double taxation. If Government, and in this I include the aggregate takings of the federal and state governments, takes from its people more than the particular source of taxation can stand, it will ultimately destroy all revenue from that source and Government will have to look elsewhere to meet its expenses.

We may consider this excessively high taxation from two standpoints: first, its effect upon existing capital, or its static effect; and, second, its effect on the production of future capital or its dynamic effect.

Now, death taxes are taxes upon capital, and this point must be kept clearly in mind. It is obvious that if Government, to maintain itself, were to take fifty per cent of every estate, small or large, and if on the average, in the course of a generation, a man could not double his inheritance, there would be an actual depletion of capital within the country, and ultimately nothing would be left to tax. This is clear enough, but there is another less readily visible, but more immediate result.

Inheritance taxes are based upon capital values. Even though the rate of tax remains the same, it makes a serious difference in government revenue, whether a wealthy man dies when the market for the assets left by him is up or when it is down. The federal tax on an estate, consisting net, of 100,000 shares of United States Steel, would be $2,961,000, if steel were 110, and $1,861,000 if steel were 80, when the death of the decedent occurred, making a difference of $1,100,000 in revenue derived by the Government. This result might be brought about by market conditions alone, and if so, in the long run, the disparity is equalized, since sometimes the market value of the stock is up and sometimes down, and on the average government revenue would not suffer. If, however, there is a continuing pressure on all values, not on steel stock alone, or on stocks alone, but on every kind of property within the country, the result is a bringing down of values and necessarily a lessening of the revenue, because the tax depends upon values and upon nothing else.

The tax is always a percentage of the value of the assets at time of death. Since an executor must obtain cash to pay his tax, he usually must dispose of the assets of the estate at what is essentially a forced sale. If an estate must realize upon some stock not generally dealt in, or a piece of real estate, for example, it can do so only by reducing the price, until a bargain figure is reached which will attract purchasers. When the next estate comes along for taxation, with similar stock, or a like kind of property, its tax will be based upon the lower price fixed by the sale of the assets of the first estate. Thus we have a permanent lessening of values and a continuous exhaustion of the source for death taxes.

As an instance, I have been told that large landed estates in England are almost unsalable, by reason of the high death duties, and that these properties can frequently be bought for the value of the improvements alone. The land, therefore, in such cases is without value; and, where formerly such land was a basis for death duties and produced tax revenue, now, having no material value, by reason of these very death duties, it yields no tribute. Formerly the land might be worth £5000 and the improvements £5000, a total of £10,000, for taxation purposes; now the land is without value and the tax must be levied upon £5000 of improvements. If the same revenue is to be produced, the tax rate must be doubled, since property subject to tax has been halved. Any tax which thus materially lowers values destroys itself.

The dynamic or moving effect of high taxes is not so immediate in its effect as the actual depletion of capital and lessening of capital values. It is nevertheless of great importance in the establishment of a permanent policy. After man has become sufficiently civilized to provide for the reasonable requirements of living, the

impetus to further effort at production is found largely in the desire to leave one's family well provided for. So long as the individual feels that he can pay the tax and still leave an estate to his family, he will increase his efforts; but if he finds that by reason of excessive taxation, the results are not commensurate with the effort, he will probably cut down his production and the general wealth of the country will be diminished accordingly. We shall have more golf players and fewer Henry Fords and Thomas Edisons. A man will not seek to build up a large fortune, just to have it taken away from his family at his death.

Mind you, I am not discussing this question from a social point of view, but from the government revenue standpoint. I understand that death taxes are imposed to raise cash. If the United States Treasury and the state treasuries want something which will realize revenue, much more can be obtained from one large estate than from several smaller ones, with an equal aggregate value. An estate of $10,000,000 net, yields $2,561,000 federal estate tax, while 100 estates of $100,000 each yield an aggregate tax of only $150,000. It would take over 1700 estates of $100,000 each, aggregating over $170,000,000, to produce the same amount of revenue as one $10,000,000 estate. It is, therefore, essential that large fortunes continue to be made and be not taxed out of existence. So, if we are to have an accumulation of capital, upon which to levy death duties, we must encourage, not discourage, its creation. Under socialism death taxes would be barren.

A taxpayer looks at things from a personal or short-time viewpoint. He is interested in his own future. The Government, on the other hand, can afford to reckon on the long run of its more distant future. Perhaps if taxes were levied lightly on the result of a man's own efforts and heavily upon his inherited assets, they would not destroy the initiative to produce and the Government would still get the maximum revenue out of death duties. It has accordingly been suggested that a light tax be levied on what the decedent himself made, a heavier tax on what his father left him, and a still heavier tax on what remained of his grandfather's estate. Such a policy would meet the wishes of those who believe that artificial means are necessary to prevent the continued existence, through generations, of large fortunes and at the same time it would not penalize the initiative which is characteristic of progress. This is a long-time policy of taxation which is perhaps not within the power of governments clamoring for present revenue.

Returning to the more immediate problem. Death taxes are based entirely upon capital. This capital can be destroyed, either by taking it from its owners and using it for maintenance of Government, or, what amounts to the same thing, by diminishing its value, or by checking the incentive for its production. That this

is actually happening, I think the figures indicate. It is the history of all excessive taxes that they destroy themselves. Take, for instance, income taxes in the cases of persons with incomes of over $200,000 a year—what may be termed really wealthy taxpayers. In 1916, with a maximum surtax of 13 per cent, there were 2449 taxpayers in this high class. The next year the rates were increased greatly and their number fell to 1672. In 1918 the rates were again increased, and their number went to 1275. In 1919 the rates were slightly reduced, and the reduction was reflected in an increase to 1451 in the number of taxpayers. There being no change in rates for 1920 and 1921, the figures fell to 868 and 535. But in 1922 the total maximum rates went from 73 per cent to 58 per cent, and the number of taxpayers in this class rose to 1097.

Now, the same thing is happening with the federal estate tax, and can best be shown by the revenue produced. 1921 was the first year which felt the full effect of the increase of rates to a maximum of 25 per cent. Our receipts that year were $154,000,000 —the most we have ever obtained. But watch the retrogression, under the same high tax in the following years: $139,000,000 in 1922; $126,000,000 in 1923; and only $102,000,000 in the fiscal year just closed. It is estimated that the increase from 25 per cent to 40 per cent, under the present law, will yield but an additional $12,000,000, and that in a year or so this increase will be lost and 40 per cent rates will yield no more revenue then than was obtained under the 25 per cent rates. Are we not fooling ourselves, when we think we can defeat economic laws?

The importance of a scientific basis of taxation to the future welfare of this country cannot be overestimated. The burden of taxes must be lightened. From the Federal Government standpoint we are doing fairly well. Per capita federal taxes rose from $32 in 1918 to $54 in 1920; then commenced to drop, and have been successively $45, $32, $28, $29, in the last four fiscal years. It is estimated that for the next fiscal year, as the result of tax reduction, the figure will be about $27, and we may contemplate further reductions. The largest single item of federal expenditure is interest on the public debt. This item amounted in 1924 to nearly $1,000,000,000. As the debt is reduced—and we are making very material headway on it — government expenditures will be cut, and with expenditures, I hope, taxation. So the tendency, so far as the Federal Government is concerned, is for a reduction in the tax burden. With the states and local municipalities, exactly the opposite tendency is disclosed. In 1918 their per capita tax was something over $20. In the next four years it rose to $27, $30, $36, $38, and later figures will undoubtedly show further increases.

It may be true that the Federal Government can, without great

danger to its budget, destroy death taxes as a source of revenue. We have recently abandoned other fields, such as transportation and many of the so-called nuisance taxes, without inconvenience. But with the state and local governments, if this particular source of revenue is destroyed, the situation is not so free from difficulty. The estate tax contributed $102,000,000 of revenue in 1924 to the Federal Government. The total government receipts from all sources were something over $4,000,000,000, so the revenue derived from death taxes represented only about 2½% of all receipts, and, as a matter of fact, amounts to less than one-quarter of the more than $400,000,000 tax reduction carried in the Revenue Act of 1924. On the other hand, the state inheritance taxes generally constitute a much larger proportion of the states' revenues, and few states could afford to have the yield from these taxes reduced in amount or destroyed. The states have, therefore, the greater interest in the permanent character of death duties.

Consider the effect of loss of this revenue upon a most important element in the community. The figures of the National Industrial Conference Board show that 16.6 per cent of the farmer's share of the national income is absorbed in taxes, as against 11.9 per cent of the income of all other taxpayers. The farmer as a rule does not pay income taxes, so this large proportion of the farmer's income, which goes into taxation, represents almost wholly direct property taxes. If there is to be any diminution in the size of the stream available to the states for inheritance taxes, it is obvious that tangible property will have to bear a larger and larger share of the states' expenses, and this burden will be placed on the shoulders of those now least able to bear it. More farms will be taxed into continued unproductivity.

Excessive death taxes, therefore, have the effect, first, of actually using up capital—instead of 1,000 units to tax there are but 500; second, of decreasing the value of each capital unit—instead of $10,000 to tax, the same assets are worth but $5,000; and third, of discouraging the production of more capital—instead of a normal increase of units to meet increased needs, no more are produced. If we are to have something left to tax, it is high time we begin preserving it. We are now selling our seed grain and will have nothing to sow when next Spring comes.

As between the states, too high inheritance taxes may, perhaps, work themselves out. Already states are bidding for residents expecting to die, just as states have bid for corporation fees by liberal laws. So, wealthy men will not continue to live in states where death is too expensive; nor will corporations, organized under the laws of states taxing stockholders unfairly, find willing investors but will incorporate elsewhere. Taxes have become personal, by reason of their size, and information about them is widespread.

A thousand talk taxes today where but one did five years ago. A state, in order to preserve its own revenue, will therefore be reasonable in its exactions. With the Federal Government, however, basing its rates upon some theory of social, not fiscal, policy, we are faced with the gradual extinction of this source of revenue, unless Congress too shall come to a scientific, not a political, consideration of a wholly economic question. You can do much to give this problem the attention it must have.

CHAIRMAN BELKNAP: I think that we have heard not only interesting figures, some of which are new to us, and all of which are well put, but we have gotten a new interpretation of them.

These are the only two regular speeches of the afternoon. Monday we had an all-day session on death taxes. The chair was empowered to appoint a committee at that time to draw up some recommendations to the National Tax Association Conference here this afternoon. I think I shall read the resolutions that we are to hand in to the resolutions committee. As I understand it, they will be acted on by that committee, before they are brought up for vote in this body. Isn't that right?

SECRETARY HOLCOMB: Yes.

CHAIRMAN BELKNAP: I thought, however, in order that they might be well considered, that it would be well to put them before you. It sounds like a very simple thing to do, to draw up resolutions that meet with the approval of a small committee, but it is not so easy as it seems. I have gotten the resolutions into the shape in which I shall read them, and I would suggest that if there is any discussion of them, those of you who are interested will appear before the sub-committee of the committee on resolutions, or that you will take them up later, when they are brought up for vote.

MR. GEORGE VAUGHAN: As I understand the rules, there cannot be any discussion at this meeting. It is well enough to read the resolutions.

CHAIRMAN BELKNAP: Yes. The idea of the meeting Monday was that the matter was of interest to the states, and that the states were really the ones to take action in this matter; therefore we drew the resolutions with that in view They are as follows:

WHEREAS, in peace times the taxation of the devolution of property belongs to the states, both historically and logically; and,

WHEREAS, the recently increased rates of the federal estate tax will affect state revenues in the future even more seriously than they have in the past; and,

WHEREAS, the demands of interstate comity require consideration of the evils arising from multiple taxation of non-resident estates by the states themselves; and,

WHEREAS, the revenue from inheritance taxation is now vital to many of the states and bids fair to become increasingly important to all the states; and,

WHEREAS, the time has now arrived for the several states to take counsel with each other and with the Federal Government, with respect to the problems of inheritance tax and estate taxation;

THEREFORE, BE IT RESOLVED, that in the opinion of this conference it is in every way desirable that an understanding should be had as to the present situation and as to the future policies of the Federal Government with respect to the use of this source of revenue.

AND BE IT FURTHER RESOLVED, that a conference should be called, composed of representatives of the Federal Government and of the various states, along with such others as may be deemed helpful to discuss the elimination of the federal estate tax.

BE IT FURTHER RESOLVED, that such a conference should be availed of as an effective occasion for the states to counsel together with respect to the structure and administration of state inheritance tax laws, to the end that such state laws may be harmonious one with the other, that the cause of present criticism be thus removed, and the withdrawal of the Federal Government from the field be accomplished without the possibility of unjust and unneighborly action by any states, and with definite assurance of state cooperation.

BE IT FURTHER RESOLVED, that the National Tax Association be requested, through its officers or through an appropriate committee, to bring this resolution to the attention of state and federal authorities, and to others concerned, and to work with such conferences and bodies as may be deemed wise, to the end that these objects and purposes may be promoted with all reasonable speed.

I say, I have read that more because it seems to fit in with the subject-matter under consideration this afternoon than for any other reason. It will not be open to discussion at this time; it will be open to discussion at the time it is presented by the committee on resolutions. I imagine there are some here who would like to ask either Mr. Atwood or Mr. Winston some question. It is the usual custom at these meetings for the speakers put up to be shot at, and therefore I suggest that any of you who have any questions will rise and give your names, as I do not know all of you.

DELEGATE: I haven't a question. I want to ask for a point of information on the resolutions proposition. It should be announced here when the resolutions committee will sit, so that parties desiring to be heard on any resolutions that are pending before the committee may have notice as to when consideration may be had and information given. That is for the benefit of anyone who is interested in a particular resolution.

CHAIRMAN BELKNAP: I shall have to ask Mr. Holcomb.

MR. GARY: Mr. Chairman, I should like to say that the resolutions committee has appointed a sub-committee. That sub-committee

will meet here in the lobby of the hotel this evening at seven-thirty, and any one that has any resolutions they wish to present to the committee, or to the sub-committee, can be heard at that time. We hope to call a meeting of the full committee sometime tomorrow; that, however, has not been definitely set, but the sub-committee will meet this afternoon, and most of the arguments, I take it, should be presented to the sub-committee to report back to the whole committee.

QUERY: At the time the sub-committee meets on the resolution that you just read, is it then open to amendment, suggestions or phraseology, or should this be done before the general meeting of the committee on resolutions?

MR. GARY: The sub-committee will be glad to receive suggested changes.

QUERY: If I wish to offer an amendment to the resolution Professor Belknap has read, can I do that before your sub-committee?

MR. GARY: Yes. The resolution, however, will come before the resolutions committee.

MR. JOHN HARRINGTON (of Wisconsin): I suppose, Mr. Chairman, that when we are afflicted with an evil, one means of getting rid of it is to exaggerate the condition. Some months ago I read Mr. Atwood's articles appearing in the public prints, and it appeared to me then, as it did in his address today, that the color was laid on much too thick. That is to say, if I knew nothing about the federal estate tax, I should suppose from the articles, and from the remarks today, that estates were afflicted with a 40% federal estate tax; the illustration of the man who might die leaving $10,000,000 subject to a 40% federal estate tax is in point.

I have not had an opportunity of reading the estate tax law recently passed by Congress; but I am assured as a fact that there is no 40% rate upon a $10,000,000 estate; and while I have not made a computation, I am assured that the average rate upon such an estate will not exceed 25% of the property. This tax is certainly high enough, without exaggeration. Is it not well enough in these cases to give us the real facts, and not suppositious cases which cannot arise?

We have, unfortunately I think, a paper rate in Wisconsin, of 40%; but it applies only to a beneficiary who is a stranger in blood, and then only upon the excess which he receives over a half million dollars. We never have such cases. Nevertheless, we find in the public prints sensational statements to the general effect that a 40% rate prevails in Wisconsin, and with a 40% rate under the federal estate tax, only 20% of the estate is left to the family of the decedent. It never happens. The highest possible rate in

Wisconsin to a member of the family is 10%, and the highest possible rate to a brother, sister, nephew, niece and similar relations is 20%; and I doubt if we have had a case where the amount received reached the maximum figures. Nearly all estates pass to the immediate members of the family; a few estates pass to relations of the second degree. In these estates the rates imposed can be borne readily; but I suppose the real facts are not sufficient for sensational journalism. This would not be important were it not for the fact that most business men and wealthy citizens know little about the law; and many of them have become panicky, and the panicky feeling is more or less contagious; and some of them begin to look around for means to evade the law. What is the object in advertising to these men a condition that does not prevail? Most of us know little about $10,000,000 estates—in fact we do not comprehend such estates. They are relatively few. The ordinary wealthy man with whom we come in contact may have an estate of a half-million or a million dollars. The federal estate tax upon a half-million dollars will average under 4%; upon a million dollars it will average 15%. There is nothing in these rates to alarm any one. The exaggeration referred to is harmful in alarming business people; and in my judgment it should be condemned.

Since I cannot have the floor again during this discussion there is another matter to which I desire to call attention. The chief evil of the inheritance tax against the estates of non-resident decedents is the collection of these taxes by states having no interest in the property, and under no theory having any equitable right to the taxes. Let me illustrate: A man spends his life in Wisconsin, succeeds in business, accumulates a large amount of property in a successful business, and incorporates in Maryland or in some other state, the corporation holding the bulk of his property, and his interest being represented by the stock which he holds. Now under the laws of most of the states this stock is subject to inheritance tax in the state of incorporation, regardless of whether the man dies a resident of Wisconsin or of some other state. An inheritance tax is collected by the state of incorporation when there is nothing whatever in such state upon which to base the tax except a small package of papers in some state department. This theory of the law has recently been upheld by several courts, including the supreme court of Wisconsin. To me this appears to be clearly an evil; and if this evil could by some means be removed, two-thirds of the trouble and turmoil connected with duplicate and triplicate inheritance taxes would be entirely removed. What logic is there in the imposition of a tax by a state of which the decedent was not a resident, and in which not a dollar of his property is located? Such state has no connection with the citizen, and has no connection with any of his property, except a mere fiction; and while

fictions may have their function in the law, they are a poor basis for taxation. If we can work out a means by which the inheritance tax can be limited either to the state of which decedent died a resident, or the state in which is located the physical property in which he has an interest, or at most in both such states, very long steps will have been taken in the direction of equitable inheritance taxes. I thank you.

Mr. Oscar Leser (of Maryland): I endorse thoroughly what Mr. Harrington has said about the unwisdom of exaggeration. He included also, unintentionally, a misstatement. Unhappily for him, I am compelled to announce that in the case of a situation such as he mentions, the gentleman would not pay one red cent to the state of Maryland.

Mr. Atwood: I do not think it would be in good taste for me to attempt to answer Mr. Harrington's very courteously put statement that my articles were too highly colored. That is the sort of thing which will have to be judged on its merits and not by a debate.

I merely wish in that connection to make one statement, very briefly, that in the articles to which he referred I specifically stated that the number of estates which would be likely to be penalized by these duplications, and so on, was very, very small in the aggregate.

Now, I might not perhaps have made as much of that point as he would prefer to have made of it, but I merely wish to register the statement that I did so state in these articles. I tried to guard myself on that point.

There was one other statement he made, however, which was more specific, much more concrete than that, if I understood it. He said that I exaggerated and over-colored the picture in my talk here, in regard to the forty per cent rate. I do not think that I did so. The gentleman to whom I referred, whose accounting I happen to have in my possession, does not have a fortune of ten million; he has a fortune of nearly forty millions of dollars. I said nothing about there being a forty per cent tax on ten million dollar fortunes.

Now, as to the social wisdom of making a man with thirty-five or forty millions of dollars pay a forty per cent tax, I do not intend to argue further. Mr. Harrington's views on that may be sounder than mine, but I did not exaggerate or color in the slightest degree in the instance I used. I said that a man who had started with two or three thousand dollars in 1891, had built up this great industry, and if he died today and all of his ten million dollars of tax-exempt securities should be sold, the estate would still need four millions of dollars, which it can get nowhere, except by selling his controlling interest in the company. I do not see that Mr. Harrington's comment bears upon that in any way.

Mr. John Harrington (of Wisconsin): Just a word. I do not

wish to engage in misrepresentation; perhaps I was mistaken in my understanding of what Mr. Atwood mentioned as the amount of the estate which he was discussing — $10,000,000, subject to a 40% rate. I did not hear him mention any other sum.

A gentleman sitting near me has hastily figured out the federal estate tax on a $10,000,000 estate, and states the amount to be a trifle under 25% upon the whole estate.

Chairman Belknap: I have, as I say, a certain advantage in being toastmaster here, and I too may be as guilty as anybody of having used extreme figures. It is very easy to say you ought not to use the top figures, in showing how much of an estate can be taken, but as there are sometimes one hundred different rates in each state, it is pretty hard to know just which figures you should take. As I said about the darkies who were superstitious, whenever one of them gets killed, all the other three hundred lay off. Just so with the business man. If one of them gets hurt pretty badly, all the other business men get awful suspicious about this tax.

Now, it does not hit everybody. But I do know of one estate where one hundred per cent of the estate was taken in taxes, right in my own town of Louisville. I have that on the word of one of the best lawyers in the city. I know of other cases where the necessary selling of securities and so on has practically bankrupted certain estates, and where certain men, at the time I found out about that, were in a situation where if they were to die at that date, their estates would be bankrupted. At the time I got a description of the situation from the lawyers, the financial arrangements were so disturbed that the whole estate would be tied up.

Those sound like extreme cases, and they are extreme cases. It is the extreme case when the darkey was blown up down there, but it makes everybody else unhappy. That is the answer that I think I can give to this talk of articles being exaggerated.

One tax official wrote me that we were irritating the public; in other words, let them sleep and we will take it while they are asleep. That is a perfectly good viewpoint in one way. On the other hand, there are plenty of men who are waking up. What worries me most about all of this type of taxation is that it puts a premium on a certain kind of mean shrewdness. A man has to go out and spend his time figuring how to beat the government, because all the other people are spending their time on how to beat the government, and if he does not do it he pays the full tax, and somebody else, a little smarter, or by incorporating himself or his securities in another state, gets off scot-free.

There is the evil of the thing. I don't want this country made up of people who are just money-grabbers and who are so shrewd and so smart that they can go out and beat this thing, and all the rest of us, with what little money we have accumulated, will have

to pay, because we are not smart about watching just where we put our investments, and all that.

That is my answer to this question of exaggeration, and I take it to myself just as thoroughly as anybody else, because I showed in a speech this spring how they could take 305 per cent of an estate. I found I did exaggerate; I should have said 294 per cent.

There are always two sides to these questions. I know what Mr. Harrington is driving at. I have tried in vain to figure some way to speak more accurately of the federal estate tax rates, but you cannot stop when you are talking about the federal estate tax, every time you mention it, to say that the rate between one million and two million dollars is so much, and the other rate is so much, and the other rate is so much. You have to take the lowest rate, if you are trying to prove the tax is too low, and the highest rate if you are trying to prove the tax is too high. I do not see any other way around it.

We have an opportunity to hear one more interesting paper this afternoon, because we are trying to shove the program ahead a little bit, in order to leave time for a good fight at the end over all sorts of various things.

Mr. McKenzie: May I have five minutes, in regard to the paper of the Under Secretary of the Treasury? I want to preface what I have to say by saying I am in entire accord with the position of Secretary Mellon, in his desire to do away with the federal estate tax; but there is one thing in the secretary's paper that struck me forcibly, and that was the fact that he very carefully indicated in his paper that he was speaking only from the revenue standpoint, and not from the social standpoint.

Now, it is manifest to all of us that death taxes and all the other taxes have two effects. One of them is the raising of revenue and the other is their social effect, and there isn't a particle of use in the Treasury or either of us playing the part of the ostrich and sticking our head under a leaf and pretending that there is no social effect. Those of you who were here the first evening, heard the Mayor of this city say to you that the taxes amounted to eleven cents per capita in this city. If you figure the average family of five, that would be fifty cents for the average family of this city, for taxes, here, to say nothing of the other taxes there are. Those things manifestly have social effects. It is also perfectly manifest that the Federal Government is going to continue to need revenue.

When Mr. Secretary Mellon drew up his recommendations to Mr. Green, of the Ways and Means Committee of the House, he specified things which would reduce revenue to the requirements of the Government.

I take it that if we reduce the inheritance tax, and if we follow

Secretary Mellon's claim that we must still further reduce the income tax, we are going to have to resort to other forms of taxation.

Here is what you are up against, and this is the point I want to make; we are going to require $3,200,000,000 of tax revenue, and the people of this country are going to pay it, and you are going to be reduced to two alternatives. One is to get it out of the income and inheritance taxes, and other things of that sort, or to take it out of the pay envelope, the living wage of the average citizen.

Now, when you come to consider the social aspect, along with the revenue-raising aspect, which you are bound to do—because if you do not, the people will, and there is no argument about that—it seems to me that you have got to be very careful about that very thing. The great effort has been, ever since the spring of 1921, to shift the burden of federal taxes from income to consumption taxes, or from ability to pay to necessity to consume. That is the whole argument, and has been since 1921, and there is going to be a social effect; and if it is not taken into consideration, in my judgment, it is the most foolish and most suicidal policy that any nation, wealthy or poor, could pursue, because it will inevitably bring down upon it the consequences that have come in every other country where wealth has been allowed to accumulate and the people have got the idea that the country is being run for the few and not for the many. I wish that that might be kept in your minds as you go along.

Mr. George Vaughan: May I offer a suggestion or two along that line? The difficulty in handling this proposition of the conflict in the inheritance tax laws of the states and Federal Government is the fact that under our system of government every state in the Union is stubborn, and also the Federal Government is stubborn. We may act in an advisory capacity and do what we can to urge moderation in the enactment of these laws that will conflict and overlap, yet I do not see how it is going to be possible for a body like this or for the states, by any sort of coercive power, to induce the Federal Government to reduce or to abandon this source of revenue; and the same thing, self-preservation, prompts the states to do it. As you know, there are only three states left, I believe, that do not have the inheritance tax law.

Chairman Belknap: Two.

Mr. Vaughan: Arizona and Florida?

Chairman Belknap: Florida and Alabama.

Mr. Vaughan: In Florida they are about to vote upon a constitutional amendment that they shall never have an inheritance tax, for the purpose of bidding for capital, for millionaires to come

there and reside. Let us take a deeper view of it. I do not see what advantage it would be to Florida to have the millionaires to make it their abiding place, unless they use some of their means to develop Florida. If they do that, then they put their property on the tax books of Florida, which today is way above the average rate. In that event they do not get anything by going there; so it is as broad as it is long. If they require a certain amount of revenue, it depends upon the people of their own state to determine how that revenue will be raised. At present, nearly all the revenue is raised by the general property tax.

There will be gradual experiments with other means, and they have already gone into the income tax, borrowed that from the Federal Government. It seems to me absurd to think that we can say that the state can confine itself to one class of taxes and the Federal Government must content itself with another class. In our states taxes overlap. The cities have taxes identical with state taxes. We try to get along with it and try to make it fit in, so that the total burden will not be oppressive; but it is at all times an attempt to devise a system that will enable a citizen of each state to take care of his own affairs.

I am in accord with what has been said this afternoon, and especially with Mr. Winston's remarks that the Federal estate tax is entirely too heavy, that the matter has to be worked out in Congress, and I think the proposed meeting will be of some value, as that comes up for discussion later.

I just want to leave the suggestion that each state has the sovereign right to decide for its own needs and purposes.

Mr. Garrard B. Winston: I just want to explain the position of the Treasury on tax reduction. When Mr. Mellon's recommendations were put in, there was a maximum of fifty per cent surtax, with eight per cent normal tax. Mr. Mellon and I, and Professor Adams at one time, and other people we could get, came in, and we discussed at what maximum rate the government could get the most revenue. There is a point in freight rates, for example, to which you can increase your freight rate, and when you fix a rate more than the traffic can bear, the result is that no traffic moves and no revenue comes in. The income tax has not existed so very long, but it does show certain well-defined indications, in the higher incomes. I read today the figures on incomes of over two hundred thousand. When your rates are up too high, you begin to lose a number of people in the high brackets. If you reduce your rates, you increase the number. This has happened twice, and I anticipate that it will happen again, when we get the figures after this year's tax reduction.

On the figures from three hundred thousand dollar incomes which we analyzed the other day, the increase from 1921 to 1922 was

from 246 to 537; 165 of the people who came into that class, came in because they took advantage of the capital gain section, which had become the law in that year. In other words, instead of carrying the height of the surtax rate, they paid twelve and one-half per cent on the capital gain, and they came into that class for that reason. If we had not reduced the taxes, we should not have gotten the money out of those taxpayers.

Now, when I say I am not interested in the social end of it, I mean I am not a sociologist, and I do not pass upon what is better for society in the long run. When I say I am interested in the revenue end of it, I mean I am interested in getting the most revenue, with the least burden, and we have no intention of shifting the tax to someone else. It is our desire to get the tax down to a figure which will bring in the most revenue.

We have heard today, and I have seen it all along, of continual efforts to find ways to dodge taxes. Now, if you get the rates down to something near reasonable, it will not be worth while to find ways to dodge taxes, and we shall get revenue. We are interested in running the government and getting the money, as well as we can, but we certainly do not want to kill the source from which we receive our revenue. We shall kill revenue if we put our rates too high, and at that time, not under my suggestion, but under your suggestion, with these high rates, we shall have to go into other fields, because the rates will become unproductive.

CHAIRMAN BELKNAP: I wonder if Professor Gerstenberg will give us his views on this matter.

PROFESSOR GERSTENBERG: I think that since a word has been said on the social aspect of the question, we had better say something in defense of the other side, and I will not take more than a minute to do it.

Let us take the case of John D. Rockefeller. I cannot give you the exact figures, but let us suppose he has a wealth of five hundred millions of dollars. Out of that wealth I will assume that three or five or ten millions of dollars are invested in Pocantico Hills and down in Florida, and perhaps in the Adirondacks. Which part of his estate is going to bear the forty per cent tax? That part, or the oil wells, or the pipelines, and all the rest of it? You are not going to take forty per cent from his private wealth, the part he spends on himself and family. That he is going to see that he keeps. The forty per cent is coming from the oil wells, from the pipelines. The forty per cent comes from productive industry, and I do not think that there is any doubt, as has been forcefully emphasized in this session, that your high rates always come from the last dollar that the man has earned, and he has earned it out of his business, and he has it in his business, and the high rates are effective upon his productive industry.

When we talk about moving from Wisconsin to Maryland, or any other state, it reminds me of the story of the man who went abroad, to London, and slapped his hand on the table and said, "You know, I would like a couple of eggs and a few kind words"; and the waitress, showing she knew her job, said, "Yes, sir." Pretty soon she came in with the eggs and put them in front of the man and said, "There are your eggs." He said, "That is very good; and how about the few kind words?" They were just as important to him as the eggs. I think although Maryland and Florida, and some of these other states, are giving the few kind words, the eggs that we have in some of these other states are not worth very much. I know of one of the states that has a rate of forty per cent that never had occasion to apply the rate and probably never will, and largely probably because of the fact that the high rates are placed upon that part of the man's wealth necessarily that he takes out of his business. He is not going to discharge his servants; he is not going to tear down his building; he has five hundred millions of dollars out of which to pay his tax. Where does he pay it from? Out of the part from which he can easiest pay it, and that is out of his business; and that is where the incidence of the tax is.

Chairman Belknap: I think one thing is often lost sight of; that it is not a question of doing away with inheritance taxes, when we speak of abolishing the federal tax; we talk as if it were easy to decide where to get the tax and where it was going to come from. I tell you that the people that are worst put to it in the United States to get taxes are the state officials. I served in the legislature last year, and it was brought home very close to me that state finances, as opposed to government finances, and as opposed to local finances, are the hard ones to raise the money for.

I have been advocating the abolition of the federal tax, and I suppose some people say I am against death taxes. I am not. I am going to raise the Kentucky tax just the minute we get that abolished. That minute the Kentucky tax is going up, so we get some money for roads.

We are now going to hear Mr. A. E. Holcomb give the digest of legislation.

Secretary A. E. Holcomb: I am going to read a prosaic thing, I am afraid. I have attempted to avoid it. At the first session of the conference I said that I felt it would be sufficient if we should print it in the book, but I have been hounded every day since to get time enough to run through the paper and take out the high spots. I am going to try to do it, but it is going to be a difficult job, and it is not going to be very easy and smooth for a listener, but if it will perhaps indicate to some one of you who happens to

notice a statute in some state that he would like to talk about to another man who is here, that will accomplish something. That is one of the advantages of these digests. If you just hear the title of a law that you are interested in and want to know a little more about it, and the man is right here and can give you better information, it will serve a purpose.

If you will pardon the very hurried manner in which I have to go through this, I will proceed and try to make it as brief as possible.

Mr. Hannan has been kind enough to write a 45-page document reviewing tax legislation in the various states. Mr. Hannan, as you know, is in the State Library of New York. He has had very long experience in drafting laws and in the preparation of laws, and in the study of comparative revenue, and other legislation.

(Mr. Holcomb thereupon gave a digest of Mr. Hannan's paper, which is printed in full in the first session.)

PROFESSOR GERSTENBERG: May I ask a question about that? Somebody was speaking the other night about early publication of it. I wonder what the final conclusion was on that point?

SECRETARY HOLCOMB: Those things are always subject to more or less fluctuation, and it is customary to leave it to the editor of the volume. If there is sentiment for immediate publication, I am sure that I could hurry it, but I have had this same request for quite a few papers; however, I will bear it in mind.

PROFESSOR GERSTENBERG: Couldn't it appear in the *Bulletin?*

SECRETARY HOLCOMB: It is hardly susceptible of proper treatment in that way.

PRESIDENT BAILEY: I want to announce a little change in the program. Mr. Vaughan's paper, to be given on Friday morning, "The Increasing Importance of Special Taxes," has been set ahead and will be given Thursday afternoon. The paper of Mr. Beall, on "Control of Expenditures in New Mexico," will be given Thursday evening.

I want to call your attention to the fact that this evening at eight-thirty we will continue at the Buckingham Hotel, on the ground floor. It is necessary to do that because there is a banquet here tonight. We have very fine quarters over there; and if there isn't anything further, we will stand adjourned at this time until eight-thirty tonight.

ADJOURNMENT

SEVENTH SESSION

Wednesday Evening, September 17, 1924

President Bailey: The time has arrived when we should commence. I should like to announce that the committee on resolutions will meet promptly at nine-fifteen Thursday morning, in the large conference hall in the Hotel Chase. It is very desirable that all members be there, because that will probably be the final meeting.

Ladies and gentlemen, I take much pleasure this evening in introducing to you Mr. Kingman Brewster, who will act as our Chairman tonight—Mr. Brewster.

Mr. Kingman Brewster, presiding.

Chairman Brewster: Whatever the system of taxation which our Congress may see fit to impose upon the people of this country from time to time, it is certainly true that the judgment as to that system and as to the government which administers it, will be determined to a great extent, and in a large measure, by the manner and effectiveness with which it is administered. I sometimes wonder if anything is done to express to the Government, particularly the Federal Government, the attitude and the position of the taxpayer, and I also sometimes wonder if it would not accomplish beneficial results if more frequently and more frankly, the position of the officials of the government in administering a complex system of taxation could not be expressed to the public.

We sometimes fail to realize, I think, that the bureau of internal revenue is an organization of some twenty-one thousand people, responsible for the handling of the returns of some seven million taxpayers of the United States. We sometimes fail to realize the difficulties which present themselves to the administrative officers of that bureau. For example, you may be surprised to realize that the amount of work presented to the old committee on appeals and review was in the ratio of thirty to one, as compared with the volume of work passed upon by the court of customs appeals. I think, however, that meetings of this character, attended by experts in this field, addressed by representative officials of the government, accomplish the ends which we need most to accomplish in the administration of our tax laws, namely, a mutuality of understanding and a mutuality of confidence.

You frequently hear the criticism raised that the government is obliged to operate in ways unknown to the taxpayer. We ask for more frankness as to procedure in practical matters of administration of tax laws, and yet I have always found as a rule that the people in the bureau of internal revenue, so far as they were able, were willing to discuss their problems frankly with the taxpayer and to lay all the cards on the table. On the other hand, the taxpayer perhaps justly complains, at times, of the summary action of officials in the department. That is a thing which I believe can lead to more dissension and more, shall I say, bolshevistic attitude toward the administrative departments of our government than almost any other thing.

The purpose of these remarks is this: We should appreciate, when we demand the time of a secretary or an under secretary of the treasury here; we should fully appreciate the effort that it means to him in coming here and discussing these practical and pertinent issues and problems with us, and for one I cannot add any words of introduction more fitting than to say that as a member of this association, I want to express the appreciation of this association to under secretary Winston for coming here this afternoon and giving us so generously of his time. He needs no further introduction. You listened to his address this afternoon, and this evening he will discuss with us changes made by the Federal Revenue Act of 1924—Secretary Winston.

CHANGES MADE BY THE REVENUE ACT OF 1924

GARRARD B. WINSTON
Under Secretary of the Treasury of the United States

Mr. Chairman, Ladies and Gentlemen: I was asked to come here and describe the changes in the Revenue Act of 1924, from a non-technical standpoint. I really know far less of this Revenue Act than the gentleman who introduced me. I do have the advantage of knowing something of what was in the mind of the treasury when they drafted the act and what they were trying to accomplish, what they did accomplish and what they did not.

We started drafting this revenue bill early in the summer of last year. We finally decided that we had to take the entire Revenue Act and rewrite it. We completed the bill in time to present it to Congress in December. It was an enormous effort. Personally, I did not do the drafting, but I was consulted on points of policy, which I took up with Mr. Mellon, and they were decided by him.

You can divide the changes, roughly, into three general branches: the political changes, the structural changes, and the administrative changes.

By political changes, I mean those particular things with which Congress has primarily to do, and over which they take complete control. I refer, of course, to the rates, to the imposition of the gift tax, to increasing the inheritance tax, and to the publicity provisions.

So far as the rates themselves are concerned, that subject I am sure is familiar to you. With the increase in the inheritance tax there was given a credit of up to twenty-five per cent for any state inheritance tax which was paid to the state. That, I think, is the only new feature besides the rates.

The gift tax is an entirely new proposition. It was designed on the theory that it would block up present holes in the act and bring more property subject to the estate taxes. We have an actuary down there in Washington by the name of McCoy, who is about the best estimator I have ever run into, and I think he has persuaded Congress that he is the best estimator. I can give him no greater praise. He says that the gift tax will not mean more than about two million dollars a year additional revenue to us. It is a new idea, and it may work and may not. It may be constitutional and may not.

The publicity proposition; under the old act, returns were secret. The treasury had an opportunity to see them; they could be brought into court in proper litigated cases and could be examined by the officials of states which themselves imposed an income tax, but they were not open to the general inspection of the public. Congress has introduced into the law a modification. Formerly we were required to post in some public place the names of all taxpayers, upon the theory that by so posting, their neighbors would find someone who was not paying the tax and let us know. You perhaps do not know that we have a law which permits us to reward informers. This change, however, requires not only the posting of the name of the taxpayer, but the amount of the tax which he has paid.

We in the treasury see nothing to be gained. It is difficult enough now to get people to put in their true taxes. To put a further penalty on them of publicity, in addition to the payment of the tax, has been felt in the treasury, will encourage tax evasion.

In addition to publishing the amount, it is provided that any committee of Congress can have access to any returns, and we are required to produce them in the committee room. There is no prohibition against using those returns in the committee room, and on the floors of Congress, and of course if so used, they would undoubtedly be privileged; so there may be occasions in which individual income tax returns are made public.

So much for what I may call the political side of the changes. The structural changes may, in general, be divided into arrange-

ments permitting a freer flow of business, and changes in the act to reach what the supreme court calls tax avoidance; to plug up, so far as we could, the holes, through which large amounts of government revenue escape. I think we can discuss those particular changes in a few sections. I do not know whether it is familiar to you gentlemen that in this federal law we have something which is not in income tax laws, in other countries. We have considered that what is known as a capital gain, is income; that is, the increment in the value of property, when realized, constitutes income. That is not the law in Canada or in England. When you consider that capital gain, increment value of property, is income, you immediately introduce into the act the necessity for exceptions to that rule, because if we were required to enforce the rule absolutely, we should stop all flow of business. By business I mean business, such as sales of real estate, exchanges of real estate, reorganization of corporations, and matters of that kind. So the most complicated and most difficult section we had to draw was the reorganization section of the act. We have drawn it upon this theory; that you can go through any kind of a reorganization which the necessities of the particular business require, provided the stockholders get no money out of the transaction or no different property than they had before. That is, you can take two corporations and merge them into one, and give the stockholders of the two the stock in the single corporation. You can take a single corporation — and this is a most important change in the new law—and split it into two corporations and give the stock of each corporation to the original stockholders. If, however, in doing this, the stockholders realize additional cash, such cash is taxed to the proper parties in the proper way. That is, if it is in effect a dividend, it is taxed as a dividend; if it is in effect a capital gain, it is taxed as a capital gain. If you just get other pieces of paper, and no more than you had before, then the original value attaches to those pieces of paper, and when you dispose of those and realize your gain, you are taxed, as if the reorganization had not taken effect.

Perhaps I can illustrate the situation to you by what went on in the past two or three years. Under the old reorganization section, stockholders of a corporation which had, say, a value of a million dollars in 1913, and a million surplus, earned since that date, could reorganize, by simply conveying its assets to a new corporation, for stock in the new corporation, and $999,000 in cash, and there was no tax, because the amount of cash they received did not exceed the original value of their stock. That was closed in 1923, when it was provided that you had to take this cash as profit, but even then you took it as a capital gain; whereas it was in reality a dividend.

Take another illustration of the methods of avoidance. If a

corporation had assets which cost a million dollars, it could take depreciation on the basis of one million dollars; if it conveyed the assets to a new corporation, through a consolidation, and they were then worth two million dollars, the new corporation could take its depreciation of the same assets on a basis of two million dollars.

It is to correct those holes in the act, and also to permit a freer play of business, that this particular section was rewritten.

It is the belief in the treasury that we shall make more in taxes, if we keep business running than we shall if we are a drag on its wheels. (Applause)

The next section is what is known as Section 220. This provided that if you organized a corporation, for the purpose of evading the surtax of the individual stockholders, we might penalize the corporation, by assessing a tax against it of twenty-five per cent of its income. There were two fundamental difficulties with the section as it then existed. The section provided that if the amount of surplus was beyond the ordinary needs of the business, you could levy this penalty. If you organize a corporation solely to invest and re-invest, nobody can tell when the earnings are beyond the ordinary needs of the business, because its sole purpose is to invest and re-invest. Under the section as it now is, if the corporation does nothing but invest and re-invest, that is *prima facie* evidence that it is used to evade the imposition of the surtax on the stockholders.

Another fundamental objection to the old section was this; the penalty was twenty-five per cent of the income of the corporation, such income to be ascertained as the income of other corporations were ascertained, which were subject to the income tax law. In ascertaining the income of a corporation, you do not take into account the dividends it receives from other domestic corporations. As a result, if your holding company was organized and its assets consisted solely in the stock of other domestic corporations, you could admit that you were organized for the purpose of saving the surtax to your stockholders, and the government was permitted to levy a twenty-five per cent fine on nothing, because, calculating its income as the incomes of other corporations were calculated, the holding company had no income. We have changed the law by saying that the income of the corporation which is subject to this penalty is its income from all sources, which includes its income from domestic corporations and its income on government securities, which are exempt as to normal tax.

The capital gain section was an innovation in 1921. It is another exception to the rule that an increment value is regular income. We found that if we left the law as it was—that is, when you sold a piece of property, and made a profit, you paid surtaxes

on the profit, at the top rate of your income — business did not move. The law was therefore amended, so that these profits can be taxed, at the option of the taxpayer, at twelve and one-half per cent. The immediate result of the change is interesting. As I happened to remark today, 165 of the people who were in the $300,000 class in 1922, but who were not in it in 1921, were brought in solely by taking capital gains, and, as a matter of fact, the government realized some thirty-four millions of dollars of taxes at twelve and one-half per cent. It would probably have received only a small portion of that revenue if the law had not been amended and the tax on these gains reduced.

There was one slight difficulty, or rather hardship, about the tax. As it was originally drafted, you could take advantage of the twelve and one-half per cent capital gain provision, if the tax on all your income was twelve and one-half per cent. Cases occurred, where the tax on a man's income, outside of his capital gain, would be only ten per cent, and he could not take advantage of this twelve and one-half per cent capital gain, until he had raised the average rate of tax on his income to twelve and one-half per cent. So, if a man had a very large income, the capital gain had clear value to him, but if he had an intermediate income, he might have to pay more than twelve and one-half per cent tax on his capital gain. This has been corrected, by providing that a man may take the option absolutely, no matter what his income is, of twelve and one-half per cent on any capital gain.

There has been in the law no provision for capital losses, and we had the situation of a taxpayer selling a piece of property, in which he had a profit, and taking a capital gain and paying twelve and one-half per cent on it. On the other hand, if he sold another piece of property on which he had a loss, he was allowed to deduct his loss in full, thereby often saving more than 12½% surtaxes. That did not seem equitable to the government, so it is now provided that a capital loss is deductible from the income tax, to the extent of twelve and one-half per cent of the loss.

We found another method of evasion in the creation of trusts; a man would create a trust in favor of, say, his children, with the right on his part to revoke the trust in favor of himself. In other words, it was a gift with a very substantial string tied to it, and it simply meant that the man would support his wife or his children, as long as he wanted to, by creating these trusts, and still keep absolute control. It was felt that that was not a real parting with the income; that the man, having the power to bring the income back to himself, should be taxed as if he had brought it back; and that is now provided in the law.

It was also found that there were a large number of trusts created for the purpose of paying insurance premiums; the tax-

payer put a certain amount in trust, paid his insurance premiums with it, and did not have the income. If he had not created the trust, he could not have deducted his insurance premiums from the income, and he would have to pay more tax. That particular hole has been blocked up.

There are one or two means of avoidance that the treasury desired to fill up, or to correct, but which got into the political field. One of these was on community property. Most of you, I think, are familiar with the fact that in certain states—I think there are six or seven of them—the wife has a half-interest in everything that the husband owns, and *vice versa;* therefore, in those states the wife can file a return for one-half the husband's income, and he files a return for the other half. With a progressive tax, this brings down the total income out of the high brackets and it means a very substantial saving. It did not seem equitable to us that a resident of some particular state should have that privilege, when it was not general; but Congress declined to follow our recommendations in that regard.

There was one other feature which was a means of abuse. We had a provision in the old law, and it is in the present law, that if a man borrowed to purchase or carry tax-exempt securities, the interest paid was not deductible as an expense. But nobody borrowed money to purchase tax-exempt securities or to carry them. They bought the tax-exempt securities, and then borrowed the money for something else, and, as a matter of fact, we could never reach them.

I think in one of the Rockefeller estates there were about forty or forty-five millions of tax-exempt securities, the income on which was entirely exempt, and about thirty or forty millions of debts, the interest on which was deducted from the income. The provision to correct this was a very close question in Congress. I think it was in and out in the Senate two or three times, and finally by one vote or more—not much more—it was finally stricken out. That was part of the old fight on whether or not tax-exempt securities should be made taxable.

Except for those features in the structural parts of the act, Congress followed almost word for word the treasury recommendations. We had a very free hand in the drawing of the language and in the methods of approach to these various means of avoidance. Of course we have not closed them all. There are two or three lawyers who were working on this bill, and thirty or forty thousand lawyers shooting at it, and as long as that condition exists, we shall not be able to close all the holes in the act. We might do it as a matter of statute, but if we did, no business would go on in this country and we should get few taxes.

Now, coming to the administrative features of the act, the en-

tire act has been rewritten. The statutes of limitations are put in some sort of order. There were half a dozen of them. We have restored the requirement that there shall be a report of the tax-exempt income. That is simply for statistical information and for the use of Congress in future legislation. In the administrative features, lots of different questions that have disturbed the administration of the act were cleared. Just to mention one of these. The question of whether you could file a consolidated return, and whether corporations were affiliated or not, depended, under the old act, on control. There was a dispute in the department as to whether control meant legal control or actual control. I think that has been ended by the statute providing that it means legal control of ninety-five per cent of the stock.

The only other important administrative feature is the board of tax appeals, about which you are going to hear later. I simply want to tell you what was in the mind of the treasury when we made that suggestion.

Under the law as it existed prior to this act, the procedure through the department was this: A man filed his return; it was examined and audited, generally in the field; then it came into the department. The department, for example, would say that he owed ten thousand dollars additional tax, and wrote the taxpayer a letter. He would object and appear before the unit, and most questions of fact were determined there. They generally reached what was the truth of the situation, although not what was the law of the situation; and then the case went to the committee of appeals and review, of which Mr. Brewster was the head. The committee reviewed what the unit had done, and then the commissioner assessed the tax.

Now, both the unit and the committee of appeals and review were simply machinery to enable the commissioner of internal revenue to determine what the tax should be. They acted for him. If the commissioner decided that the tax was not due, he would levy no assessment, and the case would never get into court for a determination. These two pieces of machinery of the commissioner's naturally, therefore, had to decide every doubtful question in favor of the treasury. Now, the difficulty was this; that having decided the question in favor of the treasury, just as all tax assessors would decide a doubtful question in their own favor, the taxpayer, under our federal law, had to pay the tax, and sue to get it back. It is not possible, under the federal statutes, to enjoin the collection of a tax, as you can do in many states. That meant that the taxpayer had to find the cash and pay the tax, and then sue to recover. It is sometimes a difficult matter to find cash. So we recommended this board as an independent administrative tribunal, which could find either for the taxpayer or for the government.

If they found for the government, the taxpayer had to pay his tax—he had had his hearing before an independent board—and then he could go into court and sue to recover. If the board found for the taxpayer, then the government was to be permitted to go into court and sue for the tax, but the tax could not be arbitrarily assessed. We believed that this plan would protect both the government and the taxpayer, and furnish a tribunal that would have no interest in any decision, except to decide it correctly.

The original board was fixed at twenty-eight. That figure was set so as to provide for minor boards, of three men each, to ride circuit in each of the nine federal judicial circuits in the country, and for one Chief Justice or Chairman. When it got into Congress the character of the board was changed completely. The board was made a court. It was a board to sit and hear evidence; it was not a board to sit around a table and decide a question in an informal conference. It has been the opinion of the treasury, that is, since I have been familiar with it, that it is a better thing to get your taxes settled and get them over and behind you than it is to get the last nickel out of the taxpayer or for the taxpayer to save the last nickel from the government. We thought that if a board could be created and could sit informally—a board of sufficiently high character, so that the taxpayer would be satisfied and the government satisfied—the board would expedite the settlement of taxes, and we should have these taxes through and not be, as we are now, still worried with 1917, 1918, and 1919 taxes. But Congress decided otherwise, and the board is now functioning, and functioning, so far as it has had the opportunity, very well.

I do not know of any other particular changes. There are, of course, a great many detail changes throughout the entire bill, but not such as will affect the principles of taxation. As I said before, this bill, in its structural and administrative features, is as good a bill as we could draw. We have as against that, the great complication brought into our income tax law by the fact that we consider capital gain as income. If we had that feature out, we could write a bill of one-tenth the length. We could take out all about reorganization; we could take out amortization, capital gain and depreciation; you can just see what it means when you begin to treat capital increment as income.

I have been speaking to you informally, and mostly from my recollection. If there is anything that I can answer in regard to the act, I shall be very glad to do so.

Mr. McKenzie: I should like to ask the gentleman a question. You remarked a while ago, that in the estimation of Mr. McCoy the gift tax would not bring into the treasury more than two millions of dollars. I wish you would clear up in my mind whether

that is the amount of direct revenue that will be derived, or whether Mr. McCoy's idea was that the new law will prevent the making of these gifts.

MR. WINSTON: Mr. McCoy, in making his estimates, so far as I have found them, goes into a good many different aspects. He looks at all phases of it, and he considered, first, that it would stop a lot of gifts; second, that it would not bring in much revenue from those who did make gifts. It is almost impossible to have a law in which taxes are so high where somebody cannot find a means of getting around them; and that element was also in Mr. McCoy's mind.

DELEGATE: Does the treasury department have any idea that Section 220 applies to a widely held corporation or only to those closely held?

MR. WINSTON: Speaking, not for the treasury, but from my own experience, prior to this amendment there were a great many corporations organized, which bought stocks of other domestic corporations or government bonds, exempt as to normal tax. I think, with this amendment, there will be very few who will take the chance. You see the penalty is so great—it is raised to fifty per cent—there are not many taxpayers that will take that chance. It has, however, a rather unfortunate effect on those taxpayers who did take the chance, because they have corporations organized and now owning these stocks in domestic companies, and the stocks may have gone up in value, and in order to get the stocks back into their own hands, they will have to pay a tax on that increment in value.

As I say, we found practically none of these corporations that we could reach. There has been a lot of talk about them, but when you begin to examine their returns, you cannot reach them. They were either inside of the law on these technicalities, or they had a surplus for the legitimate needs of their business.

DELEGATE: What I meant was, does the treasury department consider it to apply to a commercial and manufacturing concern that is not closely held?

MR. WINSTON: No. In the regulations which we are drawing, which are not out yet, we have tried to go into a little more detail. The purpose of the statute is to prevent the organization of a corporation to avoid the imposition of surtaxes on its stockholders. Now, if you organize a corporation and have a lot of stockholders that do not pay surtaxes, it is quite obvious that the statute is not being violated—I mean, you are not trying to avoid the imposition of surtax. If you have a commercial company, for instance, that has a half million capital and a half million surplus, and is expect-

ing to build a plant with the money, even though it is all in cash, that to my mind would be a sufficient explanation of the additional surplus, so that they would not be subject to the penalty. We do not want to administer this law to hurt business.

SAME DELEGATE: I know there has been a great deal of uncertainty. We have been asked a great many times by corporations whether it affected them or not, and I took the same view that you have just expressed; if widely held, with a lot of stockholders who did not have any surtaxes, it would not apply.

MR. WINSTON: What we want to reach is these small family corporations, obviously designed for that purpose.

DELEGATE: Did Section 220 of the 1918 act result in any assessments?

MR. WINSTON: No. Remember that the 1918 act, as I recall it, taxed the stockholders as if the surplus had been distributed, and I think that after the McComber case, there was considerable doubt whether it was constitutional. I don't know of any assessments under it.

CHAIRMAN BREWSTER: Will the gentlemen who arise for questions kindly give their names for the record?

MR. F. A. MCHUGH (of Delaware): A question about the gift tax. It is quite evident from the act that it is an excise tax. The tax went into effect January 1st, 1924. Now, if it is an excise tax—and excise taxes or privilege axes shall not be retroactive—what position would the treasury take on that? I mean this: A man who made a gift three days before the act was passed, did not ask any privilege and did not enjoy any privilege; now how will he be reached?

MR. WINSTON: That is a question on which the treasury will necessarily have to follow the terms of the act. The treasury can not pass on whether the act is constitutional or unconstitutional. That is your point?

MR. MCHUGH: Yes.

MR. WINSTON: That question will have to be tried out in the courts.

MR. MCHUGH: Isn't it likely, with the act being passed in June, if gifts of sufficient size made during the first six months of the year are taxed, that will be tested out?

MR. WINSTON: Undoubtedly it will be tested out.

MR. MCHUGH: What is the attitude of the department on that?

MR. WINSTON: The attitude of the department is to enforce the law as it is given to it by Congress. If Congress has passed the law, it is our business to put it through as Congress says in the law it shall go through; and our attitude on that will necessarily be that we shall contest that claim. What could we do otherwise?

CHAIRMAN BREWSTER: Are there any other questions?

MR. S. L. RUSLANDER (of Pennsylvania): I understood you to say, with repect to a consolidated return, that there was a contest in the department itself, as to whether "control" meant legal control or actual control. Now, the act of 1924 will settle it for the future. Has it been settled, and, if so, how, as to the past?

MR. WINSTON: I am not so familiar with that, except that I knew it was a disputed point. May the Chairman answer?

CHAIRMAN BREWSTER: It has never been settled to my knowledge by the department. Probably that was the reason for the new law.

MR. F. E. DOOLEY (of Minnesota): In certain cases, where the amount of stock ownership was in excess of seventy per cent and less than ninety-five, what has been the attitude on that?

CHAIRMAN BREWSTER: That is not in the statute. That is in the regulations.

MR. WINSTON: I am not so familiar with that end of it.

MR. DOOLEY: Has the bureau allowed consolidations of ownership in excess of seventy but less than ninety-five?

CHAIRMAN BREWSTER: I think not less than ninety-five.

MR. J. DUNN, JR. (of Ohio): In cases of gift tax, isn't there a possible double taxation upon the value of the gift at the time it is made? Suppose I give some property away worth one hundred thousand dollars, that cost me fifty. I give it to you and you take that property and sell it. Having in mind the gain and loss provision, would the department rule there is a double tax?

MR. WINSTON: I can only say this, that we have not completed our regulations on the gift tax, and there are some disputed matters which have not been examined by the department as yet, and that is one of them.

MR. W. W. TRUE (of Washington, D. C.): Section 204 of the Revenue Act of 1924 provides that in the case of a reorganization, the assets shall have the same value as they had in the hands of the predecessor owner, unless there shall be a twenty per cent change in beneficial interest; would the regulations provide for any stopping of the apparent iniquity there, as against eighteen and twenty-one per cent change?

MR. WINSTON: I do not recall that in the regulations. That is a point I was not familiar with, really.

CHAIRMAN BREWSTER: I think we have to compliment the Under Secretary not only with respect to his familiarity with the 1924 law, but I also say that it takes considerable courage to face an audience like this and be in position to answer questions extemporaneously in a field like that.

When one examines the legislative history of Section 900 of the 1924 Revenue Law, which provides for the Board of Tax Appeals, and compares the Act of Congress with the administrative bill submitted to Congress, he arrives at the conclusion that in addition to the complexities relating to the substantive changes in the 1924 law, there are a good many additional complexities relating to procedure.

Whenever I think about the complexities with respect to income taxes or procedure, I think of the story that was told by General Lord, director of the budget, who said that he knew of a man who wanted to educate his wife to get a budget relating to the household expenses; so he provided her with a book, and gave her a monthly stipend of several hundred dollars, out of which she was to pay the current expenses and report them in the book. She kept the book for a period of several months, and one evening he thought he would amuse himself by checking up his auditor; so, examining the book, he found several items: so much for rent; so much for light; so much for the hired help, and so forth; and every once in a while he would come to this unexplainable entry, "G. O. K.," and he looked through several more pages, and kept going through the book, and every little while he would see this entry, "G. O. K." so many dollars. He called his wife over and said, "My dear, what does this mean?, What is 'G. O. K.'? What does 'G. O. K.' mean, this entry against these various items in the book?" She said, "That means God only knows."

When I think of the changes in procedure that we are facing now, one man's guess is as good as another.

With respect to the jurisdiction of this new Board of Tax Appeals, it is a problem that is serious, although it is a difficult problem, but it is only one of the serious problems that they have to face. When Congress created the Board of Tax Appeals, it conferred upon someone a most intensely difficult and responsible position.

The President has selected as chairman of that board, subject to the confirmation of the Senate, Mr. Charles D. Hamel, who was formerly chairman of the Committee on Appeals and Review. Mr. Hamel will talk to you about the Board of Tax Appeals, and in preface may I say only this; that I believe in view of all the difficulties which are imposed by the tax itself upon this body, that it

merits the support, the confidence, and the interest and the patience and withholding of criticism on the part of every practitioner before the board—Mr. Hamel.

THE UNITED STATES BOARD OF TAX APPEALS

CHARLES D. HAMEL
Chairman, United States Board of Tax Appeals

A New York magistrate once took a cab from the Grand Central Station to his court house. The cabby overcharged him and threatened him with dire casualty if he did not pay the sum demanded. The judge paid him, and as he entered the court house, he instructed a policeman standing in the doorway to arrest the cabby and bring him into the court. He then went in and ascended the bench, and presently the policeman appeared before him with the cabby. When the cabby looked up and recognized the man on the bench he said: "Holy Moses, judge and complainant, what kind of show have I got!"

The attitude of the cabby has been that of a great number of taxpayers who have had taxes assessed against them through subordinates of the Commissioner of Internal Revenue, and whose only appeal, before paying the tax, has been to the Commissioner of Internal Revenue, or other subordinates of his. Taxpayers have naturally felt that the Commissioner of Internal Revenue, if zealous in the performance of his duties, would be controlled by a desire to collect as much revenue as possible for the Government; that accordingly, his inclination would be to decide all doubtful questions against the taxpayer, and that his subordinates or appointees, whether in the Income Tax Unit or in a disconnected reviewing board, such as the Advisory Tax Board, or the Committee on Appeals and Review, would be guided by similar motives.

This attitude on the part of taxpayers brought about discussion which finally resulted in the creation, by the Revenue Act of 1924, of the Board of Tax Appeals, the members of which are appointed by the President, with the advice and consent of the Senate, and which constitutes an independent agency in the executive branch of the Government, designed to stand impartially between the taxpayer and the Bureau of Internal Revenue.

Prior to the enactment of the Act of 1924, the taxpayer, before payment of the tax, sought revision in adjustments made in his taxes by the Income Tax Unit by taking an appeal to the commissioner. The commissioner personally could not pass upon all the questions, and various methods of review, for consideration of the questions involved were provided in the Bureau of Internal

Revenue. The Advisory Tax Board functioned prior to October, 1919. The Committee on Appeals and Review was created at that time and remained in existence until the organization of the Board of Tax Appeals. The solicitor of internal revenue also considered many appeals. This machinery merely expressed the determination of the commissioner as to the amount of tax due. Under this practice there were certain fundamental defects, which sometimes led the public to feel it did not receive unprejudiced and equitable treatment. It was objected that the appeal from the action of the Income Tax Unit was usually taken to an organization which was a part of the bureau itself; that the person who was to decide the appeal acted both as advocate and judge, since he must both protect the interests of the government and decide the question involved, and that such conditions did not insure impartial decision of the cases. If the decision on the appeal was in favor of the government, the taxpayer, only after payment of the tax, had the right to protest the correctness of the decision in the courts, but, if the decision was in favor of the taxpayer, the action of the bureau was final and the decision of the bureau could never be contested in the courts. It was contended that this condition resulted in the decision of many doubtful points in favor of the government.

To meet these objections, Congress established the Board of Tax Appeals. Although prior to the passage of the Act, the taxpayer might, after payment of his tax, bring suit for the recovery thereof and thus secure a judicial determination of the questions involved, he could not, in view of Section 3224 of the Revised Statutes, which prohibits suits to enjoin the collection of taxes, secure such a determination, prior to the payment of the tax. It was felt that the right of appeal, after payment of the tax, was an incomplete remedy and did little to remove the hardship occasioned by an incorrect assessment. The payment of a large additional tax on income received several years previous and which may, since its receipt, have been either wiped out by subsequent losses, invested in non-liquid assets, or spent, sometimes forced taxpayers into bankruptcy, and often caused great financial loss and hardship. These results were not remedied by permitting the taxpayer to sue for the recovery of the tax after payment. It was believed that he was entitled to an appeal and a determination of his liability for the tax prior to its payment.

Under the provisions of the Act creating the board, the taxpayer may, prior to the payment of additional tax, appeal to the board and secure an impartial and disinterested determination of the issues involved.

In the consideration of the appeal, both the government and the taxpayer appear before the board to present their cases, with the

result that each member of the board sits solely as the judge and not both as the judge and the advocate. The provision allowing the commissioner to sue in court for the recovery of any taxes thought by him to be due, in excess of that decided by the board to be due, relieves the board from the responsibility of finally passing upon questions involving large amounts and removes the necessity for a decision in favor of the government, in order to force the issues into court.

The President was empowered, with the advice and consent of the Senate, to appoint, solely on the grounds of fitness to perform the duties of the office, not more than twenty-eight members, to compose the board. Those first appointed were to serve until two years after the passage of the Act, after which it was provided that the board shall consist of seven members, appointed for overlapping terms up to ten years.

On July 3, 1924, the senate not being in session, President Coolidge made recess appointments of the first twelve members of the board. The appointees were chosen from all parts of the country, and were selected on the basis of their qualifications for the office.

Those appointed met in Washington on July 16, formally organized as a board, elected a chairman, and appointed a secretary. The board was addressed by the President and the Acting Secretary of the Treasury, who stressed the importance to the government of an uninterrupted receipt of revenue. They pointed out that an appeal to the board stayed the collection of a disputed tax, and that it was all-important that the board commence to function at once, in order that such taxes as should be determined to have been properly asserted, might be assessed and collected, without unnecessary delay. The board decided to proceed forthwith to the adoption of rules under which taxpayers could proceed to file their appeals, and the commissioner of internal revenue could prepare to defend them. By remaining in continuous session, the board was able to prepare and publish its rules by July 28 and printed copies were ready for the public by August 6. On July 30 the first appeal was filed.

On August 15, approximately thirty days after its organization meeting, the board first sat to hear argument on a motion made by counsel for a taxpayer, with respect to the commissioner's pleading in his case, and on August 19 the first appeal was argued before the board, all members being present. The board was ready, even before this time, to hear appeals, but none were ready for presentation prior to that date. The decision in the first case was handed down on August 27 and on the same day the board heard argument in the second case. Up to September 16, 191 appeals had been filed. Of these, 47 had been brought to issue and 10 had been heard.

The Board of Tax Appeals is in effect a judicial tribunal of limited jurisdiction. It has power to review determinations of the Commissioner of Internal Revenue, with respect to income and profits taxes, estate taxes, and the new gift tax. There are some interesting questions capable of argument on either side, as to the extent of the jurisdiction of the board over taxes asserted under past revenue acts. With respect to these, of course, it would not do to express any obiter opinions. It has already been necessary to decide, however, in a litigated case, that the board has no jurisdiction over claims for refund. This necessarily follows from the limited power vested in the board. When the Commissioner of Internal Revenue makes a determination, proposing to assess a deficiency tax, the taxpayer may appeal to the board, and, to the extent that he prevails, the commissioner is prohibited from collecting the proposed tax by distraint. He may, however, sue in the courts for the collection of the tax, in which case the findings of the board are *prima facie* evidence of the facts found. This constitutes a method of appeal by the commissioner from the determination of the board. The taxpayer has a similar method of appeal, by paying such taxes as the board determines to be proper and suing to recover them. If a tax has already been paid, however, the board is vested with no jurisdiction to compel the treasury to refund it, and the taxpayer's remedy is the same as it was before the passage of the 1924 Act—by suit in the District Court or the Court of Claims.

One of the interesting questions of jurisdiction, upon which the board has not yet been called upon to pass officially, is that of a claim for abatement, filed under Section 250(d) of the Revenue Act of 1921, where a jeopardy assessment was made before June 2, 1924, without opportunity given the taxpayer to appeal to the commissioner.

There will be cases appealed to the board, where the commissioner, applying a given theory to a taxpayer's case, has collected an additional assessment, and where, upon the same theory, he asserts a still further tax, from which appeal is taken to the board. If the board decides in favor of the taxpayer on the new additional tax, there is a necessary implication that, at best, the commissioner must have been wrong in collecting the original additional assessment. But the board has no power to compel a refund, with respect to the taxes that have been paid, and whether the commissioner will decide to reverse himself in respect to them is a question of policy. It is like the question that comes before him when he has made a decision and collected tax in the case of one taxpayer, and the courts have held in a similar case, brought by another taxpayer, that his theory was erroneous. The weight of the opinion of the board on a construction of the law, as authority

to be applied by the commissioner or the courts in other cases, will depend naturally on the reasoning given in the opinion of the board, and on its general record for making sound or unsound decisions.

The first problem with which the board was confronted was that of determining its policy with respect to rules of practice, including the admission of counsel, evidence and procedure. In the first draft of the Revenue Act of 1924, commonly known as the Mellon Bill, it was provided that the proceedings before the board should be informal, but after several changes, Congress finally decided to substitute for that provision this language: "The proceedings of the board and its divisions shall be conducted in accordance with such rules of evidence and procedure as the board may prescribe." Obviously Congress decided to leave the question of formality of procedure to the judgment of the board. So it became necessary to decide whether to provide for highly informal proceedings, such as those conducted by conferees in the income tax unit; strict and technical rules, such as those in force in the courts, or for some intermediate scheme.

The statute leaves no room for doubt as to the solemn nature of the function of the board. It is not merely a newly created higher division of the bureau, or even of the Treasury Department. It is, in the language of the statute, "an independent agency in the executive branch of the government," and as such it is expected to act independently in all its determinations. This independent character cannot be too firmly emphasized, because it seems not to be fully realized. This is what makes necessary the formal procedure of the board. If the board were within the bureau, the entire record in the bureau would be available to it, and all of the administrative aspects of each case would need be considered. The board, in the privacy of its chambers, would go through the file and, with the aid of an additional argument on behalf of the taxpayer would determine whether the unit acted wisely. Thus the taxpayer would be in much the same situation as he has heretofore been before the unit and the Committee.

This is apparently not what Congress intended. The reports of the congressional committees and the language of the statute show that what was intended was an entirely independent body, with no motive, except to apply the law to the facts in each case and reach the correct answer in that case. The board is not to collect the revenue and hence it has no fear of administrative precedents. Its concern is to see, on the one hand, that the citizen is not unjustly assessed and, on the other, that in the collection of its just revenue the government is not unduly delayed. The board represents neither party. Both parties are represented by their own advocates who, the board confidently believes, will seek wholeheartedly to give it the proper basis for a correct conclusion.

The provisions of Section 900 of the statute are very specific as to how the board shall perform its function. It must hear appeals, giving notice and an opportunity to be heard, both to the taxpayer and the commissioner. These hearings shall be open to the public and all the evidence shall be open to public inspection. It must not only decide the ultimate question of liability, but it must, in all cases, make a written report of its findings of fact and decision. In cases where more than $10,000 is in controversy, it must write an opinion. Witnesses are to be heard, and, if necessary, compelled by subpœna to testify; oaths are to be administered; papers and books introduced in evidence, and depositions taken. These are not the attributes of an administrative office. They give us the picture of a judicial tribunal.

We are familiar with the growth in recent years of the special tribunal outside the judiciary. In the Federal Government the Interstate Commerce Commission and the Federal Trade Commission are well-known examples. Such bodies have a composite function to perform, both judicial and legislative. They are largely concerned with the legislative function of prescribing specific rules of conduct for the future, and to that end they determine the facts of the past. Their primary interest is not for the parties but for the public, so that carriers' rates and business practices shall be fair. Their problems are perhaps more economic than legal, and yet these bodies have, without exception, found it necessary to adopt the forms of litigation, in order to determine issues.

This board has no such legislative function and the problems which it solves are only indirectly economic. They are primarily legal. The board must see that a specific statute is correctly applied to a completed and past state of facts and the specific liability of a single person under that statute correctly determined—a purely judicial duty. If a correct determination discloses a wrong economic result for the future, the remedy is with Congress.

But there is a further matter to be considered. The Act provides that in any subsequent proceeding in court, either by the taxpayer to recover the amount paid or by the government to collect the amount abated, "the findings of the Board shall be *prima facie* evidence of the facts therein stated." This means that in practice the findings of the board shall have judicial effect. While it is true the board has no power directly to enforce its determination, here is a provision which gives the decision a legal sanction in a court of law. I do not wish to express for the board any opinion as to the legal effect of a decision, but this is probably what may be expected to take place: Suppose the government sues in court for a deficiency which the board has held is not due. The taxpayer, relying upon the decision of the board, introduces it in evidence and the findings of fact thus stated constitute, as pro-

vided by the statute, *prima facie* evidence of the facts therein stated. But a finding of the board cannot be arbitrary and still retain its weight as evidence. Its effect is only *prima facie,* which means that it may be overcome. The opposing party—in our illustration, the Government—may, no doubt, by countervailing testimony, overcome the effect of the findings. But are they in the first instance entitled to *prima facie* effect, unless they are supported by legal evidence? Will a court respect the findings of the board, if made other than in accordance with a legal record? If the record before the board discloses that the finding is unsupported by legal evidence, how can it be justified? Does anyone, whether he represent the taxpayer or the government, doubt that if a finding of fact were made against him he would demand that it be in accordance with legal evidence and that any adverse finding not so supported would be open to attack? It is unfortunate that truth is sometimes elusive and can only be captured by devious methods; but this is a recognized fact and cannot be ignored. If we act upon what the law of our land has, after many years, come to recognize as evidence, our feet are upon solid ground. To do otherwise would be to arouse suspicion and incur resentment. This the board hopes to avoid. We want the citizen to feel confident that we will act openly and aboveboard and that the decision will be upon the merits of the case.

Having in mind the provisions of the statute and the general principles to which I have alluded, the board formulated its rules of practice in accordance therewith.

With respect to pleadings, our primary consideration was the elimination of delay. It was realized that the practice before us must be necessarily hybrid. Although designated in the statute as an appeal, cases cannot be brought before the board on a record made below. The records made in the units of the bureau of internal revenue are highly informal, and where conflicting statements have been made or conflicting affidavits submitted, there would be no basis for weighing the evidence. In many cases, large portions of the record are never reduced to writing. The proceedings before the board must necessarily take the form of a trial *de novo.* Such procedure is not entirely new but is common enough in the state courts, where so-called appeals, taken from judgments of Justices of the Peace or courts not of record, result in complete new trials before county or district courts. To a certain extent practice before the board is appellate, but to a larger extent it is *nisi prius.* This had to be taken into consideration in drafting rules for the filing of appeals and the form of pleadings, and it was also necessary to take into consideration the very important point of eliminating, as far as possible, any tendency toward delay. It was apparent that if a practice was adopted

similar to *nisi prius* practice at common law, or a common appellate practice, it would be possible for many months to elapse before issue could be finally joined and the case ready for hearing and decision, and in the meantime the collection of the revenues would be delayed. After thought, discussion, and consideration, it was provided that the proceeding should be commenced by a petition which should, so far as practicable, combine the function of a summons, or notice of appeal, a bill or complaint, and an opening, on behalf of the taxpayer, the last to be brought about by the requirement that the taxpayer state in his petition, not only the facts upon which he relies, but a statement of the propositions of law involved. In the same way the rule requires that the commissioner set up in his answer, not only his facts but any propositions of law upon which he may rely.

It was realized, of course, that in every case it may not be practicable for the parties to plead their law, in advance of the hearing. The facts adduced at the trial may well make it necessary for either party to change his ground, and say, "In view of the turn which the evidence has taken, I elect to rely on a new proposition of law which I had not deemed applicable at the time I prepared my pleading." In such cases the board may be expected to be liberal in the conduct of the hearing and permit, in effect, amendments to the pleadings, to set up new propositions of law, in conformity with the facts adduced.

Following the practice adopted in a great many of the courts in recent years, no provision was made for demurrer, but by an amendment to the rules, published after the first printing, motions were provided for, directed to the petition, which motions are intended to take the place of demurrer, as well as motions to make more definite and certain, to amend, to strike out, etc.

I hope to be able to answer any questions that any of you may desire to ask, but I may be able to anticipate a number of them by a brief outline of the practice as covered by the rules.

Appeals to the board must be taken within sixty days after the mailing of the commissioner's registered letter, proposing an additional assessment. As the board interprets the statute, the sixty-day limitation is fixed by law and the board has no jurisdiction to extend it, either by granting extensions in specific cases, or by making general rules to the effect that appeals will be regarded as filed on the day on which they are mailed, or will be regarded as having been received on the day on which they should have been received in the due course of mails. The principal office of the board is fixed by statute at Washington. An appeal cannot be regarded as instituted until the petition has been received there. This may seem a hardship to some who are very remote from Washington, such as the people of Hawaii and Alaska, but I be-

lieve that the purpose of Congress, in allowing sixty days to appeal, as against the thirty days which were allowed under previous Acts, was to take care of the situation.

Upon receipt of the petition, a copy is served on the commissioner of internal revenue by the board, saving the taxpayer the trouble and responsibility of making service. The commissioner has twenty days in which to answer, or to move with respect to the petition, and a copy of his answer or motion is likewise served by the board on the taxpayer. In the case of a motion, a time for hearing is set, as soon as the motion papers are received, and the parties or their counsel are notified. In case an answer is filed, the cause is added to the general calendar at the time the answer is received, and the calendar ordinarily is called in its numerical order. Fifteen days before the expected date at which a case will be heard, the parties are notified. Cases will be taken up in this way in Washington, but cases which are to be heard by divisions in the field will be transferred to separate field calendars. When more than one division is sitting in Washington, one calendar for all divisions will be made up in the clerk's office and the cases assigned by the chairman to the different divisions. A question which has been heard before a certain division and adjourned or postponed, or which for any other reason should go to a special division, will be sent to that division, and the other cases will be sent in their numerical order to the various divisions as rapidly as they become vacant. The board hopes to eliminate the necessity of keeping counsel and witnesses waiting for protracted periods. No case will be called for hearing before the time specified in the fifteen-day notice, although it may occur that a case may not be reached on the predicted day or for a day or two thereafter. It is the purpose of the board to encourage, so far as possible, the elimination of all issues of fact, before a case is brought on for hearing, so that the time of the parties and of the board will not be wasted and the record may be made up, without injecting superfluous matter.

As far as practicable it is hoped that briefs will be presented at the time of the hearing, but no attempt has been made to make any specific rule with respect thereto. It was believed wiser to allow the board or the division hearing such case, to decide, after a conference with counsel, what time, if any, may be granted to file briefs after the hearing and whether briefs should be submitted simultaneously or alternately.

Where it is necessary to take depositions of witnesses, both depositions on written interrogatories and depositions on oral examination have been provided for, in rules that are very similar to those commonly in force in the various courts. It is hoped that in many cases the testimony may be taken in the form of *ex parte*

affidavits with the consent of adverse counsel, and that where this is impossible witnesses will be produced at the hearing, rather than have their testimony adduced by way of deposition. The reading of testimony into the record by deposition is at best very much less satisfactory to the tribunal, and is likely to be less satisfactory to counsel, than the oral examination of the witneses in the presence of the tribunal. When the board is in full operation and divisions are holding hearings in the field, it should not be difficult for the taxpayer in ordinary cases to bring his witnesses to the place of hearing.

Inquiry has been made as to whether it is essential that the taxpayer appear in person or by counsel in every case. It was not intended to preclude either party from submitting any case, in which it is not necessary to produce and examine witnesses, on the pleadings and written arguments or briefs. On the other hand, it is not proposed to allow cases to be adjourned and the calendar broken up, by the failure of counsel to be present at the proper time. To cover both these points, a rule was adopted, providing that where counsel for either party is absent at the time the case is called for hearing, the case will be marked "submitted", on the part of the absent party or parties.

With reference to briefs, the rule provides that they may be either typewritten or printed; if typewritten, five copies should be filed on standard letter-size paper; if printed, they should be of the size ordinarily used in the Supreme Court of the United States and twenty copies should be filed. It was thought that in a great number of cases the taxpayer would prefer to submit twenty printed copies rather than five typewritten copies, as this will very likely result in expediting a final decision.

When a case has been heard by a division and the division arrives at its decision, our practice, at least until the burden of the work becomes so great that it is impossible, will be to circulate the decision among all members of the board during the thirty days provided by the statute. It is expected that during that time members who disagree will express their views to the chairman, and if it appears to him that it is advisable that the case be considered by the entire board, he will so order. Otherwise, thirty days after the decision of the division it automatically becomes the decision of the board.

Since the time at which a decision is rendered is of importance to both the taxpayer and the commissioner, for certain statutes of limitation begin to run from the date of the decision and others are suspended pending the decision, it was decided that all decisions would be promulgated at 9 o'clock in the morning. If a decision is actually arrived at during a day, it will not be promulgated until 9 o'clock the following morning. This is especially impor-

tant to the commissioner of internal revenue, in cases where his time in which to make an additional assessment has almost expired, but is suspended pending the determination of the board.

The statute provides that the board may be divided into divisions by the chairman; that the divisions may sit at any place within the United States, and that the times and places of the meetings of the board, and of its divisions, shall be prescribed by the chairman, with a view to securing reasonable opportunity to taxpayers to appear before the board or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable. These provisions have led some persons to believe that divisions would be permanently assigned to certain cities in different sections of the country. This undoubtedly would be permissible under the statute, but so far it has seemed to us inadvisable. At present it seems to the board that if it were to establish divisions, of say three members, in each of a number of cities and keep them there permanently, it would very soon have conflicting rulings coming from the various divisions. Under the statute, the decision of a division becomes the final decision of the board thirty days after it is rendered by the division, unless within that period the chairman has directed that such decision shall be reviewed by the board. If the members of the board are scattered all over the country, decisions of divisions cannot be readily reviewed. Reviewing by circulating copies of records and opinions and by requesting written comment and vote by absent members would be highly unsatisfactory. Experience already has demonstrated that there is much to be gained by listening to each other's comments in general conference, and that doubts which arise in the mind of one member or another may be eliminated by personal discussion. It has therefore seemed much wiser to arrange hearings outside of Washington in such a way that divisions which go into the field to hold them will return to Washington, so that periodically the entire board can be together, for the discussion of any questions in which the opinions of the members are in conflict. No definite arrangements for hearings in the field have yet been made. The number of cases at issue to date hardly justifies any such assignments, and it has been highly desirable to be together and get experience as a board. As the number of pending cases arising in different parts of the country increases sufficiently to justify sending divisions out, itineraries will be planned and divisions will be sent into the field to sit for stated periods in different places, and then to return to Washington for general conference. It is impossible to lay out any definite circuits and to prepare calendars showing when divisions will sit in the various towns on those circuits, for the number of cases arising in the different parts of the country should be the controlling factor, as the whole purpose of sending divisions into the field

is to meet the convenience of the taxpayer. Just as a concrete indication of what we have in mind, I might say that the number of pending cases might develop so that it would be decided to send a division to sit for a week at Atlanta, another week at Birmingham, a third week at New Orleans, and then to return. Meanwhile, another division might be sent to cover Los Angeles, San Francisco, Portland and Seattle, while a third might cover St. Louis, Kansas City, Dallas, St. Paul and Denver, and a fourth Pittsburgh, Detroit, Cleveland and Chicago. But it is impossible to make any definite plans, until the board can get more information as to the number of cases it will have for disposition and some idea as to their geographical origin.

It was suggested that different divisions of the board specialize in different branches of the tax law, but after consideration it was decided that this would be very unwise and that it would be much better to send all types of cases to all members of the board indiscriminately, so that we should always be in a position to have the views of twelve or more members on any doubtful point, instead of getting into a situation where one member would become expert in a given branch and the others rely entirely upon his judgment. The dangers of such a situation were obvious.

The statute provides for the publication of findings of fact and decisions in every case, and an opinion in every case involving over $10,000. Under present plans, the findings and decisions in each case and the opinion in those cases where opinions are rendered, will be mimeographed and available to the public shortly after promulgation, but the board does not expect to establish mailing lists for the general distribution of reports in this form. While not definitely decided, it is possible that reports will be reprinted in pamphlet form for weekly or for monthly distribution, and if this plan is carried out arrangements may be made with the Superintendent of Documents, for subscription to these pamphlets in the same way that the Internal Revenue Bulletin is now distributed. Whether the pamphlets should be the final form, with proper indices, or whether bound volumes should be prepared by the government printing office is now under discussion.

All of the members of the Board of Tax Appeals realize the magnitude and the importance of the task which the board has to perform. It has been in existence for only sixty days and it is felt that great progress has been made in building up an organization for carrying on its work. It has so far not had sufficient experience to determine whether or not its existence is justified. The purposes behind its establishment are well known. The board hopes to accomplish everything that has been expected of it. It is, however, treading on new ground and it will have before it in the future many serious problems. It may be that some of its de-

cisions will be criticized. During the early period of its existence we hope that a tolerant attitude will be taken and that its mistakes, if any, will be considered in the light of the seriousness of the problems it has before it.

I should like to add that there have been many inquiries and much speculation as to how much time the board will probably have to consume in connection with the hearing and consideration of cases not requiring the actual taking of testimony. It is our belief that very little time will be consumed in that direction. There is every evidence that the solicitor of internal revenue, representing the commissioner, will be more than glad to meet the taxpayer more than half way in coming to some sort of agreement as to the facts.

In ninety-nine out of one hundred cases there is probably not much controversy as to the facts, and from our limited experience we believe that it will be a very easy matter to present cases to the board, based on stipulations and agreements.

The statute provides that the board may be divided into divisions, and so forth.

I should like to add also that of the cases that have come in up to the present, approximately twenty per cent arise in the country west of the Mississippi River, which is considerably more than fifty per cent of our entire area. It is not likely that the number of cases arising in all that area will be over twenty per cent. It is more likely to fall below twenty per cent. I perhaps can give you an illustration of how slowly the cases are likely to accumulate in any part of the country, based on the experience which the old committee on appeals and review had.

There has been a division which sat at Seattle during the past summer. They began saving cases to be heard at Seattle about the first of last December. There were enough cases by the first of August to justify a session there of approximately three weeks. Those cases have been gathered together from the states of Washington, Oregon, Idaho, western Montana, Wyoming, and northern California. It is not likely that the board would have more than fifty per cent of those cases. Based on that experience, there would not be enough work in all that area to justify more than two sessions a year, for approximately a week or ten days each.

I think that same situation is true as to other sections of the country. So the number of cases and the locality for which they arise will determine the time and place when divisions sit. It is very likely that the accumulation of cases in any section of the country, for the purpose of making up a calendar to be heard by a division, might result in some delays, but if taxpayers desire those cases to be heard in the field, they should be given that opportunity. It is going to be a great relief to small taxpayers. The

small taxpayer who has one thousand dollars additional tax staring him in the face is just as likely to go into bankruptcy if he has to pay that one thousand dollars as the man who has one hundred thousand dollars additional tax staring him in the face. The small man cannot afford to pay for a trip to Washington, and the employment of counsel, and so forth, so that the small taxpayer in effect has no hearing unless the board can go to him.

MR. A. D. COADY (of Mississippi): I should like to ask if a taxpayer living in Mississippi, for instance, should desire an appeal, could he elect to have the hearing in Washington or at one of the district hearings which would be fixed by the board?

MR. HAMEL: We hope to make it possible for a taxpayer to have his hearing where he desires to be heard. If he desires to be heard in Washington, of course he may have that opportunity.

MR. COADY: And if he elected to wait until the board comes to him, his case would be passed?

MR. HAMEL: I think the taxpayers realize, however, that there may be some delay if he wants to have it heard before the division out in the country.

CHAIRMAN BREWSTER: Are there any other questions?

MR. OSCAR LESER (of Maryland): If I understood Mr. Hamel's argument on the subject of giving a reason for the introduction or requirement of legal evidence in the presentation of cases, it was that the findings of the body were made *prima facie* findings. I think we are all familiar with the general principles that findings of fact by any administrative officers are given such weight by the court; even an assessment made by an assessor is treated as *prima facie* valid and correct, casting the burden upon those who object to it; so that if that forms the only basis for the contention that Congress intended the complicated and intricate rules of evidence to be applied in such cases, then I think there is room for argument as to whether that is a proper conclusion.

MR. HAMEL: I am not arguing it; I merely stated these things to indicate what the board had in mind, and why it believed that some formality was required. It is not expected that there will be any complicated rules of evidence. We have made our procedure very, very simple. I do not know whether you have seen our rules of practice, but if not, I wish you would get a copy. They are just as simple as it is possible to make them. Our form of petition is the simplest thing in the world. It does not require a lawyer to prepare a petition. Any taxpayer who knows the facts in his case, who has a good reason for believing that the commissioner has committed error, and has some reason in his mind that he can put

down in black and white as to why he thinks it is error, can prepare a petition on appeal; and if he has the facts, it is the easiest thing in the world to offer them to us. He is not going to be confronted with the formality of the courtroom; it is going to be the easiest thing in the world for him to make his case.

As I said a little while ago there isn't any difference with reference to the facts in perhaps more than one case out of a hundred. There is very little difference of opinion between taxpayers and the bureau as to questions of fact, so that there is not going to be very much difficulty about it; there is going to be nothing intricate about it; there is going to be no difficulty in making your case, and I do not think it is going to be even necessary, in many cases, to employ counsel.

Mr. Oscar Leser (of Maryland): I hadn't so much in mind the idea of petition as the presentation of proof, where there might be controversy as to the facts. We all know the tendency throughout the United States, in quasi-judicial bodies, such as state tax commissions, and so forth; almost invariably the statutes have done away with the requirement of strictly legal evidence, and we also know how glad the courts are that that is the case, and whenever a court is able to ignore the rules of evidence, perhaps because a certain exception was not made in the lower court, they are always likely and very willing to give weight to the facts thus presented. That is what I had in mind.

There has been an impression through the press that the procedure here would not be that of a police court, but that it would be rather a complicated legal machinery, making it difficult for people to get a hearing.

Mr. Hamel: I think the answer to that is our rules of practice. I think it is the only answer—to read our rules of practice. The positon that the board has taken is based largely on opinions of the Supreme Court in connection with interstate commerce commission cases. The Interstate Commerce Act has some provisions with reference to the findings of fact. A number of cases have gone to the Supreme Court, I believe, and those cases we have had in mind, in connection with the formulating of our rules in that regard.

Mr. Simms (of West Virginia): I have two simple questions: One is, Can the petitioner mail his petition direct to this board of tax appeals, or mail it to some clerk designated, or does he personally have to appear and present that petition?

Mr. Hamel: Oh, no. He may mail it to the board of tax appeals.

Mr. Simms: Another question; I should like to ask is with reference to the rules governing the character or qualification of per-

sons to practice before your board. I have heard that discussed more or less, both among lawyers and some of the accountants that have been in attendance in the city in the last few days.

MR. HAMEL: Our rules with reference to admission to practice provide that attorneys at law or certified public accountants, who are duly qualified to practice under the laws of any state or territory, may be admitted to practice before the board of tax appeals.

QUERY: That does not mean the taxpayer himself?

MR. HAMEL: Yes, indeed; any taxpayer may appear.

MR. D. A. GASKILL (of Ohio): Mr. Hamel may recall some correspondence we have had concerning the meaning of or rather the interpretation of the rules of the board that the burden of proof should be upon the taxpayer. I raised the question as to what that meant, bearing in mind that in tax cases the laws are construed against the Government and in favor of the taxpayer. I note also that the Act gives the board power to prescribe the rules of evidence which should be enforced and in use in the proceedings before the board, and I wondered whether that meant that it was intended to be a substantive rule or rule of procedure.

Mr. Hamel's answer to that was quite satisfactory, and I believe it would be of much interest to the members if he would state the position of the board upon that question.

MR. HAMEL: The position of the board is merely this, that the petitioner is the moving party, and the burden is always upon the moving party. I think that is the position of the board in a nutshell, and in a few words.

MR. GASKILL: Yes, with this qualification: I believe you said that, of course, did not affect the interpretation of the law, and that the usual rules still applied as to that.

MR. HAMEL: Yes.

MR. H. SATTERLEE (of New York): I haven't any question to ask, but I should like to make one or two comments if the meeting is open for discussion.

CHAIRMAN BREWSTER: Very glad to have them.

MR. SATTERLEE: This statement may be very rambling, but I should like to echo the sentiment expressed by Mr. Hamel and also the Chairman that the board be given every opportunity to show what it can do. It has a perfectly tremendous task before it. I do not think it would be unduly pessimistic to call it an impossible task, so that whatever it accomplishes is just so much good; but I do feel that with the personnel of the board as it is now constituted, and particularly if the same character of personnel is em-

bodied in the additions which will shortly be made, we have every reason to expect that everything that is humanly possible under the law will be done by the board.

I think that in every case the appointments to the board have been made, as Mr. Hamel has said, on the basis of qualifications. I know that in the case of Ivins, one of my former assistants, there was certainly no solicitation or political influence used, and I believe that was the case in the selection of every other member of the board, so that here was a case where the office sought the man in every particular. I was also interested in what Mr. Hamel has said about the moot question of decentralization; about sending out divisions of the board to meet in different sections of the country, and arranging to have them come back and get together every once in a while. That is a matter that has been very close to my own heart, because I have disagreed vehemently with the contentions that have been made from time to time that decentralization should be put into effect as soon as possible in connection with the internal revenue bureau, in the administration of the internal revenue laws, for the reason that Chairman Hamel stated. That is the chief reason, but there are others. If different sections of the board sat in different parts of the country, conflicts would arise which would be perfectly awful.

We all know in the case of the United States District Courts, there are irritating and unpleasant conflicts which arise in the laws, as construed in different parts of the country, and this too on the construction of the common law, which has come down to us through the ages and which is supposed to be a thoroughly well-formulated, stable body of laws. But here we have in the administration of the internal revenue a system of law which has not even yet begun to be stable, and in some respects is being changed every year by Congress. If at the present time there were any serious effort toward decentralization, the present confusion would become perfectly chaotic.

I do not believe the internal revenue bureau is yet ready for decentralization, and at the present rate of changes in the laws, I do not think it will be ready for decentralization for a good many years to come.

I should also like to say something with respect to the Under Secretary's talk. I was interested in his speech, not only from what he said, but for what he omitted. It may be unfair to put specific questions to him as to his views on particular topics, but in a general way we know what his views are, and assume that they are the same as of his chief, the Secretary of the Treasury.

He has spoken of efforts that have been made to stop the loopholes for tax avoidance. Of course, there is a very great legal difference between tax avoidance and tax evasion. Tax avoidance

is legal; tax evasion is not. He has mentioned several particulars in which the Revenue Act of 1924 is different from the previous acts, in an effort to stop up these holes.

I do not know, as I say, what his private feeling is in the matter, but I do know, or my own belief with respect to some of these provisions that he has mentioned is, that they present problems which are absolutely insoluble, and never will be solved so long as the law stands in anything like its present condition. For instance, these reorganization provisions that he speaks of. I recall that in the spring of 1918 I spent two solid months while I was in the treasury department, trying to work out an answer to the various problems on reorganization, exchanging property for stock, and so forth, that arose, and at the end of two months I was surprised to find that I had not reached a conclusion in the matter which satisfied myself or anybody else. As I recall, I drew up something like five different opinions, all with a different result, and all of which I threw away. I finally reached a decision on one comparatively unimportant phase of the matter, and had it embodied in a treasury decision, about to be issued, and then the Supreme Court came along and decided the same thing, which made the treasury decision unnecessary; but, unfortunately, the Supreme Court has not resolved any of these other questions, and they are still moot questions in the Revenue Act of 1924, on the reorganization provisions. Although it has made a serious effort to solve them, in my opinion it has simply made the situation even worse than it was before.

As to Section 220, as the Under Secretary has said, there were obvious defects in the Act of 1921, with respect to that particular provision, and those obvious defects have been cured in the present act, but even with the present act, if there is any serious effort to enforce Section 220, with respect to the avoidance of the surtax, the result will be that that provision will be simply an instrument of oppression, because in the final analysis, the whole basis of the section rests upon an intention, upon a state of mind, and, as we all know, that is the most difficult thing in the world to find out, to know what a man's real state of mind is.

So, in my opinion, and I venture to make this prophecy, Section 220 of the present act will never be seriously enforced, and if it is enforced, such an outcry will go up against it, that it will be repealed or its enforcement will be dropped.

Under the Revenue Act of 1918, as has been said this evening, no serious effort was made to enforce Section 220. The only effort to any purpose that I know of was made against one of my own clients and involved the assessment of some stupendous tax of, say, twenty-five millions of dollars—I think it was a little more than twenty-five millions, if the section had been enforced. The treasury department decided, however, very properly, that the stat-

ute did not apply to that particular estate. And so with these other provisions that have been put into the act, to stop avoidance.

The whole thing comes down to this, and I know a great many gentlemen here present will disagree with me very vehemently on this, although I think probably I can say that the Under Secretary would agree with me, if the question were put to him and he thought he could properly answer it; to my mind, no act can be drawn that will stop tax avoidance when the rates of surtax are as high as they are under the present act. The only way to stop tax avoidance is to lower the rates of surtax to a point where a self-assessing tax, such as the income tax necessarily is, can be properly enforced. And, of course, there is that other phase which we have heard so much of in previous years, and which I do not think has even been mentioned yet at this particular conference, and which I do not intend to go into—the question of tax-exempt securities.

Take this perfectly obvious case which has been more or less in evidence in the public prints for the last few months. There once was and still is a very prosperous corporation which happened to start with a half-dozen stockholders. In the last few years all of the stockholders have sold out, except practically one. Of those stockholders that sold out, one took his millions and invested them in tax-exempt securities. To the best of my belief, and I have my information from pretty authentic sources, that particular stockholder who invested his millions which he derived from the sale of his stock, in tax-exempt securities, has paid certainly not to exceed one thousand dollars a year in income taxes. Two other stockholders invested the money that they got from their holdings in that company in a business which was beneficial to the country. In the last ten years those stockholders have paid over forty millions of dollars in taxes.

Now, so long as such a situation as that can exist, I shall feel no compunction in trying to advise my clients in such a way that they can avoid the payment of excessive taxes and continue in business.

Mr. John G. Herndon: Will the board consider cases which present a question of law which has already been acted upon by one district court in one way and by another district court in another way, concerning which the taxpayer does not know whether an appeal has been taken by the Government to a higher court?

Mr. Hamel: I do not believe I could properly answer a question of that kind, because it might probably come before us in some specific case. What the board will do I cannot say. I do not believe I ought to express an opinion on it.

Chairman Brewster: The hour is getting late. We have lis-

tened to two interesting discussions, and I am sure we have gained a great deal from them. I want to take occasion to again thank these gentlemen for coming from Washington and talking to us so frankly and fully.

Mr. Gary: Mr. Chairman, I am requested to read the following resolution, so that it may go before the resolutions committee and be acted on in time to report to the conference.

(Reads resolution)

I am also requested by the chairman of the resolutions committee to announce that the committee will meet promptly tomorrow morning at nine-fifteen in the large conference room of the Hotel Chase.

Adjournment

EIGHTH SESSION

THURSDAY MORNING, SEPTEMBER 18, 1924

PROFESSOR CARL C. PLEHN, presiding.

CHAIRMAN PLEHN: The program for this morning deals with a very difficult, a very interestng, and a very complicated problem, or set of problems, which affect the incidence of taxes. There are a great many different theories prevalent, with regard to the incidence of taxation. They vary more perhaps than in any other field. There are an enormous number of popular fallacies going about. Some people seem to regard a tax as a sort of a flea that drops down somebody's back, bites him, and then hops off onto somebody else, and then keeps hopping around until everybody is bitten.

Then there is the theory of some of the politicians that you can, for example, "sock" a tax on the railroads just as hard as you want and it does not hurt them, because the rate-making body will give them the money all back again, and that it is passed on to the public. I never was quite able to follow that out logically, because the same politicians depend upon the dear public for re-election, and yet they say the taxes are all "socked" on to the dear public anyway.

Then there are the general ideas that somehow or other the tax disappears, like letting out a certain amount of gas, which is finally disseminated through the whole community and then is perhaps absorbed by the atmosphere and disappears in some invisible way.

We are going to deal probably with some of the railroads this morning, and I shall call first on Professor Hunter, of the University of Illinois, who will deal with the "Shifting of Taxes as Applied to Land."

PROFESSOR M. H. HUNTER (of Illinois): Mr. Chairman, Members, and Visitors to the Conference: I feel like offering an apology for attempting to try to treat such a subject as the burden of taxes on land in the space of twenty minutes, yet I have very religiously tried to confine my paper to that length of time; therefore, I have attempted to treat only the taxes on agricultural land. The principles involved, however, are very much the same as would apply to other forms of land.

THE BURDEN OF LAND TAXES

M. H. HUNTER
Department of Economics, University of Illinois

In attempting to determine the real burden of taxes, no problem is so important, and yet so difficult, as that of shifting. The problem is important, because the burden of a tax may rest entirely, in part, or not at all upon the one who actually makes the payment; it is difficult because the possibility of shifting depends upon factors which, while they may be easily understood, are difficult of a practical and accurate application. It is easy enough to comprehend that the only possibility for shifting a tax is to effect a price change, either by increasing the price to those to whom the product is sold or by paying to the seller a smaller amount than would otherwise have been done. But when it comes to determining the possibility of increasing or decreasing price and to what extent it can be accomplished we are confronted with so many difficulties that an accurate solution is next to impossible.

This very difficulty has been responsible for many exaggerated and inaccurate statements, designed for popular consumption, the intent of which has been to make the consumer feel that he is the brunt of all tax burdens, no matter where they are placed. In a recent issue of the *Ohio Utility News* under the caption of Taxation Facts there occur such statements as the following: "Every manufacturer must add his taxes to the selling price of his goods; every farmer must add his taxes to the selling price of his produce; every landlord must add his taxes to the rents of his houses;" and so on through the whole category of producers, with the conclusion that "every one must and does pass along taxes to the ultimate consumer," hence decreased taxes will result in a lower cost of living.

An article in a recent issue of a widely circulated weekly magazine purported to show that all taxes were unloaded upon the consumer; one illustration was that as soon as taxes were increased upon hotels in a certain city, the proprietors immediately raised their rates one dollar per room. I do not know a great deal about hotel-keepers, but from my experience, I should almost hazard a generalization that if there were the possibility of an extra dollar per room, they would not wait for an increased tax to come along to get it. The popular conception of a tax is much the same as that of a monopoly price. Monopoly price is a high price, because there is no competition, and the only thing a monopolist needs to do to get more is to increase the price. My students frequently make such statements and I am always ready with some such proposal as the following: I have invented and patented a machine—

therefore a monopoly—to make an exclusive product. I have designed the most efficient plant possible and have command over the most efficient labor, so that the products can be produced at the least possible cost. Are you willing to put up the capital? Immediately they want to know what I am going to make but I tell them that makes no difference. According to their previous reasoning, we are a monopoly, but since they must know, we are going to manufacture machines for blowing soap-bubbles.

This may be a foolish illustration but it does illustrate the point that we frequently overlook, both in the case of the monopolist and in the possibility of shifting taxes, namely, that the purchaser of the product plays a very important role. He is interested in the utility of a product and is willing to pay no more for it because it becomes monopolized or has an increased tax upon it than under other conditions. If the farmer could raise the price of corn, wheat, or pork to take care of a tax, he could raise it to take care of other things and there would be no need for agitation for agricultural relief through federal subsidies of one kind or another.

The word "shifting" has been used rather loosely, with the result that much confusion has resulted in the discussion of tax shifting. Before entering the discussion of the shifting of land taxes, therefore, it is important that the meaning of shifting be clearly in mind. The difficulty has arisen because of the failure to distinguish between *shifting* a tax burden and *causing* or *placing* a tax burden. A case of shifting a tax burden occurs only when the one upon whom the tax was originally placed *unloads* it upon some one else. He remains in exactly the same position as before the tax was levied, and others bear the burden. A burden may be placed upon others than the one upon whom the tax is levied, however, even though no possibility of shifting exists. In fact, it is probable that every tax, no matter how or where levied, will have some such effect. Suppose a tax of $100 is levied in such a way that there is no possibility of unloading or shifting the burden. The individual must now adjust his budget to pay the tax. In case he does this by buying fewer consumption goods, the producers of these goods will feel the effects. In case he buys goods as usual, but curtails his savings by the amount of the tax, then the effects of the tax will be reflected in a smaller amount of loanable funds. In such cases a tax would place a burden upon others than the one paying it, although it has in no degree been shifted to them.

There has always been much discussion of the burden of land taxes. Much attention centered around them in the reasoning of the Physiocrats in France, and it is interesting to note that their conclusion was that the burden of all taxes, wherever placed, was shifted back to land. Land was the only true source of wealth

and all additions to national wealth came therefrom, because it alone yielded a surplus. Rent, or the "produit net", was the one source of wealth, hence all taxes must ultimately be paid by the landowner. The practical conclusion was, therefore, to place all taxes on land and eliminate the expense and subterfuge of the shifting process.

The interest in the burden of land taxes has continued, with different ideas as to its resting place. Many at present seem to take the opposite view from that held by the Physiocrats and indicate that all land taxes are shifted to the consumer. All who make such statements may not be serious in the belief but may have some personal motive. It seems singular, for example, for members of a real estate board to attempt to get their tenants to vote to keep taxes down, on the ground that all taxes are added to rents. If this be true, then landlords have a great deal more concern over the welfare of their tenants than is generally conceded. In a recent issue of the *Bulletin of the National Tax Association,* Mr. L. M. Livengood takes the same position, by declaring that the landlord passes his taxes on to the tenant, since they are a part of the cost of doing business and he must recoup himself. This contention is directly opposed to that advanced by the Physiocrats, and in one or the other, or somewhere between the two, may lie the truth as to the burden of land taxes.

The principle underneath the possibility of shifting a land tax is no different from that underneath the shifting of any other tax. The problem is, can the owner of the land recoup himself for the tax, through somehow effecting a price change? First, let us take the case of the landlord and tenant, where the landlord pays the taxes. Will it be possible for him to shift an increased tax to the tenant by exacting a higher rent? By the process of competition for land among tenants the rent will vary for the different grades of land, so that the tenant, no matter what grade of land he is occupying, will be getting a nominal return for his labor and capital. Should the landlord attempt to shift a tax by an increased rent, the tenant cannot afford to pay it, because it will force his labor and capital return below what it would command elsewhere.

It may be, for some reason, that the tenant has not been paying the full economic rent—that is, he is being more than compensated for his labor and capital. Competition may not have worked itself out; the lease may have been for five or ten years and within this period rents may have advanced. The landlord may seize upon an increased tax as a reason for increasing the rent and may even believe that he is unloading it on the tenant. He is able to do this, however, not because of the tax, but because he has not been receiving the full differential between his piece of land and poorer pieces of land.

In the last few years taxes have increased greatly and for a part of the period there was a rise in rents, and it was easy to connect the two into a cause and effect relationship. Yet if there had been no increase in taxes on land, with other economic conditions as they have been, the chances are that rents would have advanced as they did. The prices of agricultural products were high, consequently land became more in demand, and the price which tenants were willing and anxious to pay advanced. After the war, however, the prices of agricultural products declined much more rapidly than the tax burden. Land thereby became less desirable, which was reflected in the declining scale of rents.

The land owner occupying his own farm has no more opportunity of creeping from under a tax burden than the one who leases to a tenant. His only possibility lies in passing it on to the consumer of his wheat, corn, or pork, by exacting a higher price. Consumers of bread do not care whether the wheat was raised upon land bearing a tax of one, three, or five dollars an acre. A bushel of wheat has the same power to satisfy desire, whether it is grown upon taxed land or untaxed land, and it is this power to satisfy desire that determines what the buyer is willing to pay. Land values, leaving out the speculative element, are determined by capitalizing the rent, or the surplus above wages and interest. Since the poorest piece of land under cultivation — the marginal unit—just compensates the owner for his labor and capital, there is no surplus left to capitalize, hence there is no value upon which a tax is levied. An additional tax upon land values, therefore, would not apply to this land; none would be driven out of cultivation by it; there would be no change in the amount of products raised, consequently no possibility of effecting a price change, and the burden of the tax must rest upon the owner. A specific tax upon acreage under cultivation, however, would work differently. This would affect the marginal piece in use, make it unprofitable to cultivate it, drive it out of use, lessen the amount of commodities produced, and thereby cause a price increase. Such taxes are so seldom found as to need no consideration.

Much use has been made of the rate of return on investments, to show that the investor will not bear the burden of a tax on land, but will unload it upon some one else, in order to insure himself the current return, say of 5%. One line of reasoning is as follows: When one buys or improves property for rent, he is expected to get a fair net interest return therefrom, the same as he would receive from any other investment. In order to get such a fair net interest, he must include in the gross rental, to be paid by the tenant, all the taxes and charges necessary to carry the property. The landlord, in order to determine the gross rental, puts together the factors of cost and adds to this a fair return, just as a merchant

arrives at the selling price of his goods. This is the argument frequently advanced by real estate men. "In every way and in every connection," says one "the tax is finally assumed and paid by the user, whether in the matter of rents or otherwise . . . for it is not only expected but required that the investor get a fair interest return on the investment."

Another line of reasoning, based upon the rate of return, comes to the conclusion that taxes upon land are burdenless; that the present owner has succeeded in unloading the entire burden upon some previous owner. The reasoning is somewhat as follows: An individual goes to buy a piece of land, upon which he expects to receive the current rate of return, 5%. He determines the net annual income from the land to be $1500, which he capitalizes at 5% and decides that the farm is worth $30,000. No account has been taken of the taxes of $250 a year. When the buyer takes these into consideration he will capitalize them and reduce his purchase price to $25,000. He will pay $5,000 less for the farm because of the tax; he will keep it to produce a permanent annuity of $250 to turn over to the taxing authority. He is paying the tax each year, but has left the burden of it upon the original seller, since he was forced to sell for $5,000 less because of the tax. Subsequent sales would cause no burden upon the present or future owners, because they would still be able to secure $25,000.

It is evident that both of these conclusions cannot be correct and a little examination may show both to be erroneous. It is doubtless true that we have a higher price level because of taxes than if the government could perform its services without them. And we should have a still lower price level if labor would perform its services without wages; and the more we eliminate costs the more nearly we approach the condition of free goods. No one will deny that an investment will not be made at less than the current return, yet it does not follow that if all taxes were removed the current return would continue above what it is at present. Other factors than taxes determine at what rate individuals will be willing to save and invest. The chances are that over a period of time more products would be produced, prices would fall, and the rate of net return with which investors will be satisfied would settle very much where it is at present.

The investor who seeks to buy land, or an office building, of course considers the tax as a part of the expense, and over against the sum total expenses he weighs the probable demand for the products—what will his prospective customers be willing to pay? If he estimates correctly he will get the current return or more, but the customers pay for the product, not in order to relieve the owner from a tax, nor because he is entitled to the current return, but because they get a value received for the price paid. If every

investor got the current return, just because he is entitled to it, there would be no business failures; and if every land owner got the current return, just because he is entitled to it, there would be no cause for wail about an agricultural depression.

Those who conclude that the present owner of land creeps from the burden of taxes through assuring himself the current rate of return by the capitalization process, fail to note one important fact, namely; that land is not the sole object of taxation. If, in the above illustration, the tax of $250 had just been placed upon the land *and no other taxes were in existence,* then the reasoning would be correct—the amount of the tax would be capitalized and deducted in order to assure a net return of 5%. But the situation is entirely different. The other avenues open for investment—hotel, theater, office building, apartment, drug store, barber shop, and what not—all are presumably subject to the same tax burden as land, and in buying these the purchaser would make the same calculations as in buying land. The permanency of the investment in each case would of course have to be taken into consideration, since other avenues for investment only in varying degrees approach the permanency of land. In case he finds an investment which is not subject to tax, as a government bond, all other factors being equal, the difference he will consider in the return will be the exact amount of the tax. If 5% be the net return necessary, a non-taxable bond will have to bear that interest to sell at par. If the tax upon land equals 2% of its value, it will be purchased so as to yield 7%. Likewise with all other taxed investments. Since the current rate of return for a particular time is determined by a number of taxed investments the purchaser of land is under the same tax burden, and assumes it voluntarily, as if he had bought any other form of income-producing property.

The above reasoning has taken for granted that the land owner aways acts "*economically*", yet a number of factors should be noted which may weaken or strengthen the above conclusions. The economist usually plays safe by insisting somewhere in the argument, "other things being equal", and it is some of these other things that should be considered.

The assumption has been made that the tiller of the soil will not continue, unless he gets the current return for his labor and capital; that is, that there is freedom of mobility in capital and labor. In no line of production is there absolute mobility of capital and labor, but there is much more in some industries than others. To say nothing of his investment in the land, the capital of the farmer is exceedingly fixed—there is no chance of his converting it into any other use, should it become unprofitable. His plows, harrows, wagons, tractors, horses, mowers, and reapers can be used but for one thing—to cultivate the soil. Combined with this is the immo-

bility of his labor. He is capable only of farming and would have difficulty in taking up any other occupation.

Combined with this element of immobility is the fact that the farmer in general has no accurate record of costs and returns. His dairy products and vegetables come from his own cows and gardens. His meat is raised, butchered, and cured by himself. He works two, five, ten, or fourteen hours a day, depending upon the season, weather, etc., and keeps no accurate record of labor costs. His depreciation account is equally lax, since little attempt is made to keep trace of soil, machinery, and building depreciation. The assistance given by the wife and children in caring for the poultry and dairy products and lending a hand in the busy seasons, such as harvest, are treated as contributions. And he has "made money" if, at the end of the year, he has been able to save one, two, or three hundred dollars, while if accurate accounts had been kept, he might have been the loser by more than that amount.

The rate of return is not always a controlling factor in the purchase of land. It is the one form of investment that the farmer knows something about. He is skeptical about stocks and bonds, while if he has a deed to a farm no one can get that away from him. Sometimes a nearby farm is desired for the son of a family, or a tenant will become anxious to own his farm. Mere ownership, consequently, regardless of a "fair return", has played a considerable part in the purchase of land.

While the money income of the land owner may be low, this is often partially compensated for by what might be called a psychic income. The farmer is the entrepreneur, conducting his own business and is independent. He does not have to look forward to the Fourth of July or Labor Day for a holiday. He does not have to punch a time-clock, morning, noon, and night. Frequently the associations in a community are considered valuable. This is especially true in religious communities, where an individual will refuse to leave even though his income be small or a farm will command a high price because an individual wishes to locate there. In many communities the spirit of neighborliness plays no inconsiderable part.

With perhaps one exception, these apparent uneconomic conditions strengthen the previous conclusion that the burden of land taxes cannot be shifted. That one exception is in the case of the landlord and tenant. Because of the immobility of his labor and capital, because of his inaccurate accounts of costs, and because of a neighborhood feeling, the tenant may permit a reduction in his return rather than go elsewhere. The landlord may have raised the rent for any other reason than a tax, however, with the same results. In case the owner works his own land, however, an increase in taxes may lessen his return, until he does not get the

current wage or interest, yet he will continue, because he does not know the pure economics of the situation or is not free to act as they would dictate. The result is a large number of submarginal farmers, cultivating pieces of land and living upon them because they own them, unable to sell them, and accepting a standard of living of varying degrees less than the capital invested and the labor expended would warrant.

Still another factor deserves to be mentioned: Theoretically marginal and submarginal land has no value and consequently should not be taxed. The tax assessor, however, fails to take this view and places all land on his assessment list. The statement that a piece of land is not worth the taxes upon it may be, in a number of cases, literally true. In no other form of productive enterprise is this as true as in the case of land, because no other forms of investment are as permanent, and in most other forms net income is given more consideration in arriving at tax-paying capacity.

The inevitable conclusion from the above reasoning is that it is next to impossible to unload the burden of land taxes upon any one but the owner of the land. It does not follow, however, that land bears a heavier tax burden than other bases of taxation, or that farm lands and buildings are more heavily taxed than urban houses and lots. The tax rate varies materially from township and county to city, and this of course has an important influence in determining the burden. In productive enterprises a comparison of the burden should be based upon the part of the net income taken in taxes. To find the tax burden upon agriculture, public utilities, manufacturing, etc., the part of the net income taken should be the basis of comparison, considered from the possibility of its being shifted.

CHAIRMAN PLEHN: This paper, like probably some of the others that will be read this morning, is in a sense based upon theory; is somewhat theoretical, but sound theory has a very important practical bearing. In that part of my paper, read the other day on school expenditures, which I had to cut out for lack of time, was an attempted discussion of how high general property tax rates might practically actually go; where they had to stop. I think you may be interested, when that is printed, to compare that with Professor Hunter's paper.

I take the Chairman's privilege of saying one more word. Many of you have seen perhaps what you have considered a very important speech or address, which Professor Richard T. Ely made recently bfore the Tri-State Congress. The pamphlet has been extensively circulated, and those of you who have not seen it will find it worth while to write to Professor Ely or to the Institute of

Land Economics, of which he is the moving spirit, for a copy of it. I was stimulated by that speech to undertake to devise a simple little algebraical formula for the easy and quick calculation of the effect of an increase in the tax rates upon the value of land, the selling value of the owner's part of the land, for in a sense the state becomes a part owner by reason of its taxes. With the permission of the secretary, I want that printed as an appendix to the paper which I referred to, and possibly some of you may find it useful.

I want to say for the benefit of those who are afraid of mathematics—Mr. Holcomb fainted away when I said something about algebra — that it is so simple that a boy with a grammar school education can use it. You may find it amusing to play with it at some time, and you may also find it useful.

There are two announcements which I have to make. One is to remind everybody that the session this evening will not be held here, but will be over in the Buckingham Hotel, across the way. We have been obliged to move.

The second announcement is that there will be a highly interesting and important paper by Mr. Vaughan at the ninth session this afternoon, brought over from the Friday morning session, on "The Increasing Importance of Special Taxes."

This afternoon's session shows only two papers, and Mr. Vaughan will be transferred to this afternoon.

Now I have great pleasure in calling upon Professor David Friday, Professor of Economics, New York School for Social Research, on the " Shifting of Income and Profits Taxes."

THE SHIFTING OF TAXES ON PERSONAL INCOMES AND ON PROFITS

DAVID FRIDAY

Professor of Economics, New York School for Social Research

One of our leading financial journals has referred editorially to "those confident souls who are sure they know just how the burdens of taxation are distributed among their fellow citizens, and which social groups have finally to pay the bill." The writer of this paper denies any such degree of confidence in his knowledge of the effects of income taxes upon prices as the editor satirizes. He was not directing his jibes at the academician, however, but rather at the cocksure attitude of our publicists and statesmen who talk so dogmatically of the ability of those who pay income taxes to escape the ultimate burden.

It is just this attitude revealed by many of the utterances from

the platform and in the press which makes it imperative that we review once more the body of fact and of logic which has been accumulated upon the effect which taxes on income and profits exert upon prices. Of logical principle there is little that is new. That astute legislator, business man, and scholar, David Ricardo, set down the dominant principles one hundred years ago. Professor Seligman has extended them and applied them to modern conditions in his admirable book on "The Shifting and Incidence of Taxation." Professor J. A. Hobson has developed most fully that phase which involves the taxation of differential incomes. It is not likely that anyone will soon add much to the work which has been done by these men. A restatement of their contributions is all that is needed.

But we have had a considerable augmentation of our factual data during the last decade. For during that period we have seen abrupt changes in the tax rate levied both upon income and upon profits; and these changes have been of such great magnitude that the resulting changes upon prices should be apparent if there is any causal relation.

Anyone who has followed the tax discussions of the last five years must be impressed by the wide prevalence of the equal diffusion theory of taxation. It is not necessary to review the history of this theory in detail. It has been popular at previous periods in the world's affairs. That theory holds, briefly, that no matter where the tax is levied it is finally shifted to the consumer in higher prices. Those who put forth this simple theory do not as a rule, feel called upon to point out how the process of shifting works. They content themselves with bold statement and with a few rough analogies. If you inject a drop of liquid into the veins of the human being at any point of the body, it will at once be carried throughout the whole system by the circulation of the blood. Economic transactions in the community are like the circulation of blood in the individual. If you place a lighted candle in any part of a room, the light diffuses itself to all parts thereof. So, they say, with taxes. They forget to mention that the illumination in different parts of the room will vary inversely as the square of the distance from the candle.

The tenacity which the equal diffusion theory of taxes has in the public mind is probably explained by the fact that the sum total of taxes collected by the government must somehow be paid by all the people, taken as a whole, and constitutes a subtraction from the national income available for personal expenditures or for savings by the individual. Since the people taken as a whole must pay all the taxes, it is easy to assume that everyone must pay his due part.

Those who go beyond these simple and naive methods of reasoning upon the effects of income and excess profits taxes hold that

the present distribution of income and property is determined by natural factors which cannot be changed by law. Differences in the ability of men, in the fertility in land, or in the richness of natural resources are facts which cannot be materially altered. The disinclination of men to save and to take the risks of entrepreneurship are stubborn facts which cannot be disposed of by legislation. This position was admirably put by one of its exponents recently in the following words: "There tends to be a normal relationship between all the parties in the industrial organization which is based upon fundamental conditions. The varying rates of compensation to capital or to labor are due to different qualifications required or different conditions of employment, and so long as the variations (in compensation) represent such different conditions they cannot be arbitrarily changed by any act of authority, by the method of taxation, or otherwise." No mention is made of compensations received from inherited property.

In other words, all of the income and the profits which individuals or corporations now receive are necessary, in the sense that if any of them are reduced, people will no longer devote themselves to their present employment and activities, but will either shift to another occupation or will retire from productive activity altogether. In either case the supply of services and of products will be decreased in the lines from which productive activity is withdrawn, and prices will be raised.

Now all of this analysis seems to the careful observer, whether he be economist or business man, superficial and inaccurate. If the withdrawal from one industry is to be accomplished by shifting to another, then obviously taxes on incomes and profits which are universal cannot be evaded by this method. If the tax is levied on only one line of industry, it can easily be evaded by shifting to another, but a universal tax cannot be avoided by a decision to change one's occupation. Professor Seligman has developed this point fully in his "Shifting and Incidence of Taxation," and anyone who wishes to follow out the argument may do so by reading his chapter on this subject.

The assertion that present incomes are necessary to induce the amount of productive activity by way of labor, saving, and risk-taking which men are now putting forth is the fulcrum of the argument for the universal shifting of taxes.

We must examine, therefore, into the truth or falsity of the necessity of these incomes to stimulate the productive service for which they are paid. In one field it is clearly not true that all the profits are necessary in order to stimulate supply. In the case of monopolies the price is not fixed at the point which will yield necessary profits, but is fixed at the level which yields the highest net profits to the producer. Monopoly gives an economic advan-

tage, just because it frees the seller from a considerable degree of competition, and enables him to fix the price so far above cost as to yield unusual profits. He has control of his supply, and can fix price at any point he chooses. If a tax is levied he will add it to the price if, and only if, this increases the total amount of his profit.

It might seem at first blush that he would always add the tax to his price. But this is not true. If the monopolist tries to fix his price too high the decline in the demand for his product will be so great as to reduce his profits. If the tax is levied upon the act of production at so much per unit of output, the monopolist can often shift a part of it to the consumer. But if it is levied upon the profits earned by the monopoly, the tax will not be added to price. He has already fixed his prices at the point where they will yield the highest net return. Any change in price will, therefore, decrease his net income and will likewise decrease the amount which remains after paying an income tax which is levied at a uniform rate. The monopolist has, then, no avenue of escape from a tax upon profits or the income from his business. Just because he is a monopolist, and because he has already fixed his prices at the point of highest net returns, he must bear the income tax as a diminution of his monopoly profits.

Thus far we have enumerated two limitations upon the theory that taxes upon profits are shifted to the consumer. If the tax is levied universally upon all profits, it cannot be avoided by shifting to a different industry. If the business whose profits are being taxed is a monopoly it cannot be shifted at all, even if the tax is not universal.

There are other sources of income larger than necessary, besides the existence of monopoly. Our natural resources vary in their degree of fertility, as in the case of land, or in their degree of richness, as in the case of mines of coal, copper, iron ore, and the precious metals. They vary also in their distance from the great centers of population where their output must be marketed and used. If the richest mines and the most fertile fields were extensive enough so that the entire demand for products could be met from them alone, competition between those who owned them would keep prices at a point which covered only the necessary cost, including interest on capital and ordinary profits. But with the growth of population the supply from the richer fields and mines became inadequate. As a result, prices rose above cost of production and yielded a surplus. It was then that other sources of supply where cost of production was higher were brought into activity. As population continued to increase it was necessary to raise prices further. Thus in the case of bituminous coal the average price realized by the mining companies for some years previous to 1916

had been approximately $1.40 per ton. The gross profit, after paying wages and other operating expenses, had been close to 25 cents per ton. In 1916 the price rose to $1.60 per ton, and the gross profit to 34 cents. In 1917 the price became $2.80 and the gross profit 85 cents. By 1920 the mines realized $3.60 per ton for this coal; and profits were 92 cents per ton, as against 25 cents five years earlier. The anthracite coal mines of Pennsylvania are an excellent example of the working of this principle, as are the corn lands of Iowa. It manifests itself in increasing royalties and an increment in the value of coal lands and of farm lands. The value of farm lands, exclusive of buildings, in the state of Iowa rose from $1,256,000,000 in 1900 to $6,699,000,000 in 1920, because the demand for farm products increased the price more rapidly than cost. As a consequence people bid for the land which yielded this surplus over cost, and ran the price up to five times the level which had prevailed at the beginning of the century. Any tax which falls upon the profits of those producers who are making beyond the ordinary rate which is necessary to keep men in business remains upon the people who own the natural resources at the time at which the tax is imposed. They are not shifted to the consumer, and subsequent purchasers of the natural resources make allowance for the existence of the tax in the price which they pay. The supply of land and of natural resources is fixed, and the whole supply is available for use, no matter whether the rent, or surplus income, be high or low. The supply of these products will, therefore, not be decreased by the imposition of a tax, and the price will not be raised to cover the tax.

Are there other differential incomes which arise neither out of monopoly, nor out of the existence of natural resources of unusual fertility or richness or location? Are there people or corporations who get incomes larger than necessary to keep them in business, despite the fact that they are subject to competition and have no natural resources of an unusual character to give them an advantage? The statistics which have been gathered and compiled during the last decade prove clearly that there are such differential profits in all lines of industry. The compilation of invested capital and of earnings of corporations made for 1917 in response to the Borah Resolution showed earnings which varied from actual losses to 25, 50, 75, and even 100 per cent, in almost every line of manufacturing industry. In the field of banking the variation was from actual losses to profits of 75 per cent. Here there is neither monopoly nor are any natural resources involved.

It might be thought that since these figures are for 1917, the conditions which they disclose were entirely incident to the quite unusual effects of war and wartime prices upon profits. But other compilations which have been made from the income tax returns

of corporations in the prewar years 1911 to 1913 show variations ranging from losses to 75 per cent. Nor is the situation any different in the post-war period. During the calendar year 1919 the national banks in our most important commercial and financial centers made earnings which averaged 16.8 per cent on capital and surplus. There were ten of these banks; and their individual earnings ranged from 10 per cent to 35. In 1919 the majority report of the Senate Finance Committee shows over 40,000 corporations which earned over 20% on invested capital and almost 9,000 which earned from 50% to 100%. Even in 1921 there were 30,000 corporations which reported over 8% and 9,000 which reported over 20%.

During the year 1923 the earnings of the national banks of the United States were 8.5 per cent on their capital stock and surplus. In one city of the middle-west the combined national banks showed a loss of 18 per cent. In an industrial city of the south they showed a profit of 25 per cent. In ordinary years the spread is not as large as this, but anyone who will look through the reports of the Comptroller of the Currency for a period of years will find that an average of 8 per cent for banking profits is ordinarily made up of some groups of banks which show losses and other banks which show twice the average rate.

Somehow in this complex industrial system of ours, with its variations in price, its fluctuating volume of market demand, and its ever-changing technique, there are always certain to be profits which are much higher than the ordinary rate, and much higher than those which are necessary to keep men in business. Taxes which are levied as a percent of these profits do not reduce productive activity, and therefore have no effect upon the supply of products and upon their price. This is especially true when they are levied only on profits in excess of some ordinary rate of return like 8 per cent. But it is also true of a tax which is levied at a uniform rate upon all profits. In any one year there are in every industry establishments which are paying no taxes because they make no profits. These establishments sell their products in competition with others whose profits are large, and whose taxes are therefore high. Competition forces them all to sell at the same price in a competitive market.

If one traces the course of prices over the last ten years and compares it with the tax burden borne by industry during that period, one finds no support for the theory that the revolutionary gyrations which occurred in prices during that period were caused by corresponding changes in taxes. Prices began to rise during 1915, and increased steadily during 1916. At that time the tax on business profits was negligible. For corporations it stood at two per cent, yet at the end of 1916, prices stood at 49 per cent above

the level of 1913. Prices continued to rise; in the summer of 1917, heavy taxes were imposed, both upon normal profits and excess profits. But the price level was not accelerated in its upward course, as a consequence of these heavier taxes. From the passage of the excess profits tax law in 1917 to the end of 1918 prices rose by only twenty-five points. They had risen 62 points before America declared war. Congress reduced the taxes upon excess profits for the year 1919; yet that year saw a phenomenal rise in prices, which continued well into 1920, when they stood 45 points above the level of 1918. Then prices began to fall, and despite the fact that the tax rate remained absolutely unchanged, they continued their decline until in December, 1921, they stood 107 points below the peak.

It is, of course, possible to insist that had taxes been reduced they might have fallen lower, but surely no one can doubt for a moment that the major forces which controlled prices during this period must be sought elsewhere than in the field of taxation. At the end of 1921 taxes were reduced. Prices promptly began to rise, and in April of 1923 reached a peak 21 points above January, 1922. After that they declined again, and now they are once more rising.

Thus far we have been discussing taxes upon profits. What of those which are levied upon personal incomes? All taxes which are levied against individuals as such, rather than against business and its activities, have little or no effect upon the prices received by those individuals for the personal service which they render; upon the rent which they receive on their real estate, or upon the interest they receive for the use of their capital. Here again the test is whether the imposition of a tax upon wages and salaries, rents, and royalties, interest or dividends, reduces the supply of the labor which is rendered, or of the property which is put at the disposal of the public, or of the business man's activity in production.

By far the most important form of personal service in industry is labor. Wages and salaries absorb more than one-half of the total product of industry. Will the laborer work less; will he decrease the supply of the personal service which he renders, in case his taxes are increased? Certainly the common laborer and the skilled mechanic will not do so, unless the taxes are so heavy that they can be met only with a greatly increased exertion. What he does is to cut down his expenditures in other directions, or perhaps he works a little harder or a little longer. Taxes upon the manual laborer, then, normally do not tend to increase wages. It is true that wages rose during the last decade, and that taxes have increased. But wages rose because the demand for goods was large and their production yielded high profits. The profits of corpora-

tions in 1916 were exactly twice as large as in an average pre-war year. Under such conditions labor is in demand, and employers bid actively to get it. This raises wages. The laborer would work at the old wages. Certainly an imposition of taxes would not induce him to work less.

The same holds true of the professional man, who works for a salary. A lawyer, an accountant, or an engineer does not work less vigorously, because his income tax is increased. Anyone of us can cite numerous cases in which he attempts to cover this addition to his budget by greater exertion. The fact that any other profession or occupation which he may enter involves the same burden of taxation eliminates the possibility of any effect of such taxes upon wages and salaries.

The services rendered by people in saving and investing capital are doubtless still further from any possibility of being lessened through taxes, and thus raising interest rates. Variations in the rate of interest in modern industrial society depend much more upon changes in the demand for capital than upon variations in its supply. This has been especially true within the last decade. In 1921 and 1922 the interest rate fell sharply, not because we saved more, but because people were willing to take less capital at high rates of interest than had been the case during the years immediately preceding. During 1923 interest rates rose, not because the supply of capital was smaller. It was undoubtedly larger, for production had increased amazingly during the two years previous. But the demand for capital increased with reviving production and with larger profits. In short, the supply of capital is surprisingly stable. It varies little with fluctuations in the rate of interest. Since this is true, the tax upon income received as interest has little effect upon the volume of savings at the present time. In fact, it is conceivable that saving might even be stimulated by lower interest rates or by a tax upon income received as interest. The imposition of a general income tax has, therefore, very little effect, either upon the wages of labor or the interest upon capital. The cost of production is not increased by such income taxes, hence the prices of products to the consumer are not affected thereby.

The service which is rendered by the business man is probably more susceptible to discouragement by taxation than is that of the laborer or the capitalist. But it is very doubtful whether in America any appreciable number of business men have been induced to withdraw from industry because of high income taxes. It is certain that thus far the indexes of physical output which measure our productive activity much more accurately than any mere money figures can, show no abatement in enterprise among American business men. The year 1923 witnessed the highest level ever at-

tained in the United States in the output of mines, manufactures, and electrical industries. The output of agriculture was maintained at practically its highest level, despite the withdrawal of a considerable number of people from that industry during the last three years.

Those people who feel certain that taxes levied upon rich persons and upon corporations are shifted to the consumer should peruse the record of profits during the last ten years. If their statements were true, it would follow as the night the day, that the profits of corporations had increased by the amount of the taxes imposed. Yet such is not the case. In 1916 there were no excess profits taxes on these corporations, while their income tax stood at the very low level of two per cent. Yet corporate profits of that year have only been exceeded twice since 1916. They reached their peak in 1917, not in 1919 or 1920, as is popularly supposed. In that year they stood at $10,101,000,000. The highest point which they have ever reached since then was in 1919, at $8,416,000,000. In 1920 the combined income of all corporations fell to $5,873,000,000; and in 1921 to the very small sum of $458,000,000. They increased in 1922 and again in 1923. But the figures for even the latter year will still be less than in 1916, despite the fact that the corporation income taxes of 1923 were approximately $1,000,000,000, as against $171,805,000, or almost exactly one-sixth of that amount in 1916. It is simply not true that the corporations have been able to shift the tax burden upon the public. The growth of net income reported by corporations between 1913 and 1923 is not proportionate to their increase in investment during the last decade. Out of that net income they were obliged to pay $1,000,000,000 in taxes as against $43,000,000 in 1913.

Chairman Plehn: I am confident that that was one of the papers that you will turn to first when you get the book from Holcomb to reread the proceedings.

We shall now have the pleasure of listening to Mr. Zoller, on "The Incidence of Business Taxes."

Mr. J. F. Zoller (of New York): Mr. Chairman, Ladies and Gentlemen: I feel slightly embarrassed in that this is the first time I have appeared before the conference of the National Tax Association to discuss a subject from a layman's point of view.

The paper that you have just heard has been given by a professional in this particular line, and the conclusion reached in that paper is that income taxes, whether on individuals or on business, are not shifted to the consumer. I do not know whether it was intended that the two subjects presented were to conflict or overlap one another or not, but the gentleman who has just spoken

confined his remarks to business income and profits taxes and did not discuss other taxes on business.

I want to say at the outset that I am impressed by these two demonstrations [pointing to signs] of what somebody appears to know about the shifting of the tax burden, but I do not think both of these signs should be posted in the same room, because one says every dollar added to taxes is a dollar added to the cost of living, and the other says excessive taxes will tax business out of business. If they are shifted, you cannot tax business out of business.

Now, notwithstanding the paper presented by the gentleman who preceded me, in a great many cases the income tax and the profits tax and any others imposd upon business are reflected in the selling price of the article produced. They go back to the excess profits tax of 1918 and try to determine whether or not any profits tax was shifted. That is no criterion, because those taxes were imposed so rapidly and unskilfully upon business that they did not have the house in order at the time and could not shift, but keep them on longer and they will be reflected in the cost, the same as the increased cost in raw materials or other things that necessarily enter into the price that the producer must charge the consumer.

I appreciate that I am taking long chances in coming here to discuss a highly technical subject. I am discussing it entirely from the observations of a man that has noted the operations of taxes upon business; and there are others of very high character that will have the same opinion.

A speech of the President of the United States not many days ago pointed out that he was in favor of reducing taxes, because he said in the long run they were really a burden upon every man, woman and child in the country. I think there is some truth in that statement, notwithstanding the technical conclusion that we may have to reach when we approach this subject entirely from an economic point of view.

THE INCIDENCE OF BUSINESS TAXATION

J. F. ZOLLER
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The important question in respect to any tax is not who pays the bill in the first instance but upon whom does the burden ultimately rest? Certain members of Congress and of the state legislatures believe that the burden of a tax on business rests for all time on the business taxed or, without believing it, contend that to be the fact before the people they represent. Business men generally, on the other hand, contend that any tax on business is shifted to the consuming public and that the business is merely out the time, trouble and expense of collecting the tax as an agent of the government.

If it be true that any tax on business constitutes a burden on the business, then, of course, it is paid ultimately by the owners of the business—stockholders, in the case of a corporation; partners, in the case of a partnership, and sole proprietors, in the case of a business owned by a single individual. The present federal income tax of 12½ per cent imposed upon corporations is imposed upon the theory that the tax is a burden upon the individual stockholders. For this reason dividends on corporate stock are not subject to any normal income tax in the hands of the stockholders, because under the theory of the law, the normal tax has been paid at the source by the corporation as agent of the stockholders. This theory, by the way, without regard to the incidence of the tax, is at once exploded so far as preferred stockholders are concerned, if there ever are any earnings in excess of the amount necessary to pay the preferred dividend. If a dividend on preferred stock is paid it is paid at a fixed rate and not reduced at all by any normal income tax imposed upon the corporation. Therefore, the federal normal income tax on corporations, if a burden on the stockholders, is paid by the common stockholders and preferred stockholders go "scot-free".

Incidence of taxation does not have reference merely to the amount of the tax and the persons that pay that amount, but is also concerned with any increase, regardless of amount, in the price of commodities, borne by anyone and resulting from the tax. To put the proposition another way, if a particular tax resulted in reducing the profits of the business taxed and at the same time increased the price of the commodity produced, by the amount of the tax, the incidence of the whole tax would be upon both the business and the consuming public, but in that case the burden would be just twice the amount the government received in revenue. The mere shifting of a tax in whole or in part from one person to another is one thing; the increasing of the cost of commodities by the imposition of a tax may be an entirely different matter, but in either case a burden as a result of the tax falls on persons other than those upon whom the tax is imposed.

Authorities everywhere generally agree that taxes on land (apart from the erections thereon) and poll or head taxes on freemen cannot be shifted and that the burden in these cases is borne by the person upon whom the tax is sought to be laid.

The reason that a tax on land cannot be shifted is because land does not have to be produced. Nothing that mortal man can do reduces the land supply. There is, therefore, as much land available after the imposition of a tax on land as there was before. The competition in the land business also is precisely the same after the laying of the land tax as before. For these reasons the land tax falls and remains on the owner of the land. It follows

that a tax on land at the outset is nothing more or less than a confiscation of a part of the land value by the government. It is contended by all leading authorities that the whole tax, unless the rate is increased after disposition of the land, is paid for all time by the original owner. That is to say, the owner of land at the time the tax is first imposed pays all the taxes on that land for all time even though thereafter he sells it to someone else. This is because the purchaser capitalizes the annual tax, deducts the capitalized tax from the value which the land would have had, had there been no tax, so that the price paid enables the purchaser to pay all future taxes out of the income from the land and have left the going rate of return on the investment. In other words, the purchaser buys free of tax at the original rate. This being true the removal of the tax on land would result in paying over to the present owners the amount that had been deducted from the original purchase price. If, however, the tax rate on land is increased after its purchase, any succeeding landlord must bear any increase in tax imposed during his ownership of the land. If the increase in tax in the case of any landlord exceeds the increase in rent, the income from the land of that particular landlord is reduced below the going rate of return. This would be unfair and unjust unless returns from property other than land were correspondingly reduced by taxation. (See *Principles of Economics,* Taussig, Appendix A; *Principles of Economics,* Seager, Appendix B.)

Poll, per capita or head taxes, on freemen cannot be shifted, because they are imposed upon men in all trades and professions and do not serve to decrease the number of wage-earners. In fact, it is stated on good authority that poll taxes tend to lower the standard of living and that such lowering of the standard of living tends to stimulate reproduction, thereby causing an increase in the number of workers and a decrease in the price of wages. Evidently mankind reproduces faster amid poverty than amid affluence. A head tax on slaves, on the other hand, does not have the same effect as a tax on freemen but has the same effect as a commodity tax because a slave, as distinguished from a freeman, is a commodity. (See *Outlines of Economics,* Ely, Appendix C; *Wealth of Nations,* Adam Smith, Appendix D.)

It is important in this discussion to dwell on land and poll taxes, because they constitute the only taxes which, according to general agreement, cannot be shifted, or which do not result in imposing a burden on persons other than those called upon to pay the tax. More than this, the reason that these taxes cannot be shifted furnishes evidence for supposing that other taxes cast their burdens upon the public generally. Land taxes cannot be shifted because land does not have to be produced and, therefore, no land is withdrawn from the market because of the tax. Human beings are not

produced in the sense that commodities are produced and, as a matter of fact, unlike a tax on commodities, a poll tax on free human beings results in increasing instead of decreasing the labor supply. The corollary of these propositions at once is that taxes imposed on commodities that have to be produced can be and are shifted or what amounts to practically the same thing, result in casting corresponding burdens upon members of society generally although the tax is sought to be laid only on a specific class of such members.

In considering the effect of any tax on commodities the law of diminishing or increasing return plays an important part. The law of diminishing return can best be illustrated in the case of agricultural products. A given amount of land will yield a certain quantity of agricultural produce with a certain amount of fertilizer and labor expended upon it. By increasing the fertilizer and labor a greater yield can be obtained from the soil. If the process is continued far enough, a point is inevitably reached where the value of any further increase in the product obtained will not equal the cost of the additional fertilizer and labor expended, so that if more fertilizer and labor is used beyond this point, the profit returned is diminished rather than increased. The law of diminishing return does not apply in the same way in the case of commodities manufactured by the art of man as contra-distinguished from commodities grown upon the land or produced from the soil. Therefore, there is a distinction in the working out of the law of diminishing return between agricultural products and manufactured products. A manufacturer can usually reduce the cost of his product per unit by increasing the output of his factory, while the farmer's cost per unit may increase with the increased production. The distinction is said to be due to the fact that the fixed capital of the farmer is by nature almost always utilized to its fullest extent, while the fixed capital of the manufacturer is almost never utilized to its fullest extent. It follows, therefore, in most cases, that the manufacturer can increase the number of units produced without any increase in the fixed capital account. This gives the manufacturer, by increasing the number of units produced, the opportunity of spreading the same fixed capital over more units, with the inevitable result of less cost per unit. It follows then that manufacturing business usually is subject to the law of increasing return whereas agricultural business may be subject to the law of diminishing return. (See *Economics,* Hadley, Appendix E.)

If there be competition in the production of certain manufactured commodities where the business is subject to the law of increasing return and a tax is imposed upon such commodities, then the cost of production of all competitors is necessarily increased as a result of the tax. If the demand for the taxed commodity is

wholly inelastic; that is, if the public will purchase a certain number of units during any given period, notwithstanding any general rise in the competitive price, then such price will rise by the amount of the tax and the incidence of the tax will be entirely on the consumers.

Demand for competitive commodities, however, is never wholly inelastic. Any increase in price usually reduces consumption because not so many will buy at the increased price. Reduced consumption means reduced production because the aim of the manufacturer is not to produce more than will be consumed. But reduced production itself, where the business is subject to the law of increasing return, results in increasing the cost per unit of all the units produced. Therefore, any tax on a competitive manufactured article, where the business is subject to the law of increasing return, raises the price of that article by the amount of the tax plus the increased cost of production due to the diminution of consumption resulting from the increased price. In other words, not only do the consumers bear the whole burden of the tax but an additional burden besides due to the increased cost of production, all of which is the result of the tax. Any tax, therefore, on competitive business that restricts consumption and discourages increased output necessarily results disastrously to the consuming public. There probably is no better way of imposing unnecessary burdens upon the consuming public than to put a tax upon competitive commodities manufactured by a business subject to the law of increasing return. (See *Outlines of Political Economy,* Chapman, Appendix F.)

It is necessary to hesitate a moment in this discussion to note the effect of a tax on commodities produced by competitive business subject to the law of *diminishing* return. It has already been stated that the business of agriculture is the one most naturally subject to such law. If the article taxed is produced by a business which has already increased its output to such an extent that the profit has been reduced rather than increased, then the tax increases both cost and selling price the same as in the case of business subject to the law of *increasing return,* but the tax also, by raising the selling price, curtails both consumption and production. Such curtailment, because of the diminishing return on the greater output, reduces instead of increases the cost of production and the consuming public gets the benefit of such reduction as an offset against the increase in price due to the tax. This, however, is all theory. In practice, probably, with the possible exception of agricultural products, the situation never prevails for a space of time worth mentioning. No competitive business, not under government control, can be expected for long to increase its output beyond the point of increasing profit and obtain a reduced profit until some

tax comes along to curtail consumption and reduce the cost of production.

Where any business is singled out and a tax put on its commodities, commodities in general being free of tax, it is an economic maxim that if the business continues, the price is raised by the amount of the tax. This is because, by and large, all business must in the long run be substantially equally profitable. Capital is withdrawn from any business that is not as profitable as business in general. Any business producing taxed articles cannot remain as profitable as a business producing untaxed articles unless all the tax be shifted to the consuming public. (See *Principles of Economics,* Mill, Appendix G.)

From the foregoing it is evident that in respect to competitive business any tax on commodities, with the exception of a tax on bare land, is all borne by the consuming public and that to the extent that the tax curtails consumption the price of the commodity is increased by more than the amount of the tax. Taxes on competitive commodities then, as a general proposition, result in shifting to the consumer an amount in excess of the amount of the tax.

It is next necessary to consider taxes imposed on business not in respect to units produced. These consist of license fees, franchise taxes, taxes on buildings or other erections on land, taxes on implements of trade like machinery, furniture and fixtures, taxes on intangible personal property used in the trade or business—in short any tax imposed generally on all business not measured by the output of the business.

Under economic law competitive business establishes what is known as a natural price. Such natural price consists of the cost of production plus the going rate of profit on the capital invested. If more is produced than is necessary to supply the effectual demand for the product at the natural price, then the competition of the sellers will reduce the price, making it less than the natural price and we have what is known in business as "over-production". On the other hand, if less is produced than is necessary to supply the effectual demand for the product at the natural price then the competition of the buyers will increase the price, making it more than the natural price, and we have what is known in business as "under-production". However, in the last analysis of the situation all business, with the possible exception of business controlled by the government and agriculture, whose production depends somewhat on atmospheric or other conditions not controlled by man, tends to produce substantially just enough to supply the effectual demand for the product at the natural price. (See *The Wealth of Nations,* Adam Smith, Appendix H.)

It is self-evident that anything that increases generally the cost of production increases this natural price, because such natural

price consists of such cost of production plus a profit on the capital used. Taxes imposed generally on all business increase generally the cost of production of all business. Such taxes, therefore, increase such natural price by substantially the amount of the tax and the tax is thus shifted to the consuming public. Furthermore, it may be stated, that as not so many will probably buy at the increased price, consumption and production are curtailed, probably resulting in a further increase in the cost so that the price to the consumer is increased by more than the amount of the tax.

The conclusion, therefore, is, as a general proposition, that any tax imposed generally on competitive business, with the exception of a tax on bare land, results in shifting to the consuming public an amount in excess of the amount of the tax.

The foregoing deals with taxes laid on competitive business. It is necessary to deal separately with taxes laid on monopolistic business because the effect of such taxes is governed by entirely different economic rules. A monopoly is in the position to get all the traffic will bear regardless of natural price or going rate of return on capital. However, a monopoly is subject to the law of elasticity of demand; the higher the price of the monopolized article the less the effectual demand therefor. It is, therefore, the purpose of monopolies to fix the price at a point that will produce the largest profit. This point is the highest price that can be obtained for the greatest output. To put the proposition another way, the ideal monopolistic price is one which if increased or decreased will reduce the profit of the monopoly. This point or ideal price is probably theoretical. It is doubtful if it is ever really determined in actual business.

The working out of the monopolistic price is illustrated by the following tables:

TABLE NO. 1

Price Per Unit	Number of Sales	Total Earnings	Expense Per Unit	Total Unit Exp.	Fixed Expense	Total Expense	Net Profit
$0.10	600,000	$60,000	$0.03	$18,000	$50,000	$68,000	$— 8,000
.09	800,000	72,000	.03	24,000	50,000	74,000	— 2,000
.08	1,200,000	96,000	.03	36,000	50,000	86,000	+10,000
.07	1,800,000	126,000	.03	54,000	50,000	104,000	+22,000
.06	2,500,000	150,000	.03	75,000	50,000	125,000	+25,000
.05	3,500,000	175,000	.03	105,000	50,000	155,000	+20,000
.04	5,500,000	220,000	.03	165,000	50,000	215,000	+ 5,000

In the case covered by the foregoing table it is noted that six cents per unit is the ideal monopolistic price because that price yields the greatest profit to the monopoly.

The next table increases the fixed expense to $60,000 retaining all the other figures as to price, cost per unit and number of sales, etc.

TABLE No. 2

Price Per Unit	Number of Sales	Total Earnings	Expense Per Unit	Total Unit Exp.	Fixed Expense	Total Expense	Net Profit
$0.10	600,000	$60,000	$0.03	$18,000	$60,000	$78,000	$—18,000
.09	800,000	72,000	.03	24,000	60.000	84,000	—12,000
.08	1,200,000	86,000	.03	36,000	60,000	96,000	+ 0
.07	1,800,000	126,000	.03	54,000	60,000	114,000	+12,000
.06	2,500,000	150,000	.03	75,000	60,000	135,000	+15,000
.05	3,500,000	175,000	.03	105,000	60,000	165,000	+10,000
.04	5,500,000	220,000	.03	165,000	60,000	225,000	— 5,000

From the foregoing table it should be noted that notwithstanding the fixed charges have been increased $10,000 as compared with Table No. 1, thereby reducing the monopoly profit $10,000, the ideal monopolistic price is still six cents per unit because that price still yields the greatest profit.

The next table reduces the fixed expense to $40,000 as compared with Table No. 1.

TABLE No. 3

Price Per Unit	Number of Sales	Total Earnings	Expense Per Unit	Total Unit Exp.	Fixed Expense	Total Expense	Net Profit
$0.10	600,000	$60,000	$0.03	$18,000	$40,000	$58,000	$+ 2,000
.09	800,000	72,000	.03	24,000	40,000	64,000	+ 8,000
.08	1,200,000	96,000	.03	36,000	40,000	76,000	+20,000
.07	1,800,000	126,000	.03	54,000	40,000	94,000	+32,000
.06	2,500,000	150,000	.03	75,000	40,000	115,000	+35,000
.05	3,500,000	175,000	.03	105,000	40,000	145,000	+30,000
.04	5,500,000	220,000	.03	165,000	40,000	205,000	+15,000

From the above table it should be noted that notwithstanding the fixed charges have been reduced $10,000 as compared with Table No. 1, thereby increasing the monopoly profit $10,000, the ideal monopolistic price is still six cents per unit, because that price still yields the greatest profit.

From Tables Nos. 1, 2 and 3, it is established that any change in the fixed charges of a monopoly does not change the price of the monopolized article to the consuming public.

The following table increases the unit cost from $0.03 to $0.04 as compared with Table No. 1:

TABLE No. 4

Price Per Unit	Number of Sales	Total Earnings	Expense Per Unit	Total Unit Exp.	Fixed Expense	Total Expense	Net Profit
$0.10	600,000	$60,000	$0.04	$24,000	$50,000	$74,000	$—14,000
.09	800,000	72,000	.04	32,000	50,000	82,000	—10,000
.08	1,200,000	96,000	.04	48,000	50,000	98,000	+ 2,000
.07	1,800,000	126,000	.04	72,000	50,000	122,000	+ 4,000
.06	2,500,000	150,000	.04	100,000	50,000	150,000	+ 0
.05	3,500,000	175,000	.04	140,000	50,000	190,000	—15,000
.04	5,500,000	220,000	.04	220,000	50,000	270,000	—50,000

From the foregoing and last table it should be noted that the ideal monopolistic price in that case is seven cents instead of six cents as shown in Table No. 1, and that while any increase in the cost per unit reduces the profit of the monopoly, at the same time it increases the price of the monopolized article to the consumer.

By increasing the unit cost one cent per unit, the production is decreased 700,000 units (not so many are able to purchase at the higher price), the profits of the monopoly are reduced $21,000, but there is shifted to the consumers of the reduced output a burden of $18,000 while certain individuals are unable to purchase at all.

The inevitable conclusion is that any increase in the fixed expense in the case of a monopoly does not increase the price of the monopolized article and the added expense is borne by the monopoly. On the other hand, any increase in the unit cost of an article produced by a monopoly reduces the profit of the monopoly but at the same time shifts a burden to the consuming public which may approximate the burden borne by the monopoly.

Applying these principles to taxation it follows that any tax imposed at a fixed amount on a monopoly; that is, a tax not measured by the amount of the output, increases the fixed charges and is borne entirely by the monopoly. Therefore, ad valorem taxes, license fees and taxes on the right to do business, not being dependent upon the amount of output, are borne by the monopoly and not shifted to the consumer.

The same thing is true in respect to net income taxes which when imposed on a business are nothing more or less than a tax on profits. These taxes are borne by the monopoly and are not shifted to the consumer. A monopoly cannot increase its price for the purpose of shifting a net income or profits tax, without reducing its profit and paying the tax on the reduced profit. It never

pays to reduce a profit because of a net income or profits tax. The greater the profit, the greater the net return to the taxpayer after the payment of the tax.

On the other hand, any tax imposed on a monopoly measured by the output, increases the cost per unit and results in reducing the profits of the monopoly but at the same time casts a burden on the consumer which may wholly or in part offset any advantage derived from the tax. (See *Outlines of Economics,* Ely, Appendix I.)

It has been demonstrated that a gross receipts tax imposed on a public utility, a public monopoly, results in a slight rise in rates; that is, a shifting of a small part of the tax, and a marked reduction in the profits of the utility. In short, a gross receipts tax imposed on a public utility is shifted to only a small extent, the greater part being borne by the utility. (See article by Prof. Carl C. Plehn, Appendix J.)

From the foregoing it may be concluded:—

1. Any tax imposed upon any commodity produced by competitive business is entirely shifted to the consuming public and as the cost of the commodity is probably increased by curtailed consumption due to the shifting of the tax, the price to the consumers is probably increased by more than the amount of the tax. Land not being a commodity produced, a tax thereon is not governed by this rule.

2. Any tax not a commodity tax imposed upon all competitive business alike increases the cost of all the commodities produced and is likewise shifted to the consuming public and, because of the probable additional cost in producing the commodity, due to the shifting, the price to the consumers is probably likewise increased by more than the amount of the tax.

3. Any tax imposed upon any commodity produced by a monopoly results in reducing the profits of the monopoly but at the same time casts upon the consuming public a burden which may approximate the amount of the tax.

4. Any fixed tax, income or profits tax, not measured by the amount of business or output, imposed upon a monopoly is not shifted but borne by the monopoly in a reduction of profits.

5. A gross receipts tax imposed upon a public utility has been demonstrated to result in a slight shifting to consumers, the major part being borne by the utility.

There is now left for consideration the effect of a net income or profits tax imposed generally upon competitive business. Such taxes cannot be imposed upon all business, because not every business operates at a profit. When there is no profit there is no tax. The effect of this tax, therefore, is not covered in the foregoing consideration of business taxes imposed generally on all competitive business.

Under economic law it is contended that there are always marginal producers in any competitive business. A marginal producer is a producer that neither makes nor loses but sells continually at cost and is always, therefore, on the margin between a profit and a loss. This marginal cost fixes the price at which commodities produced by competitive business are sold to the consuming public. Producers whose costs exceed this marginal cost must sell at a loss and are forced out of business. Producers whose costs are less than this marginal cost sell at a profit representing the difference between their costs and this marginal cost. Therefore, marginal cost is the highest cost of any producer remaining in the business and the price to consumers is determined by such highest cost. (See *Principles of Economics,* Seligman, Appendix K.)

A tax measured substantially by net income or profit, imposed generally upon competitive business, casts no burden whatever upon the marginal producer, because the marginal producer makes no profit on which to base the tax. It follows then in theory that a tax on net income or profits imposed generally upon competitive business cannot be shifted by an increase in price, because of the competition of the marginal producer who pays no tax. In theory the price is always the marginal cost, regardless of the amount of income tax imposed upon producers that sell at a profit. This is the foundation of the statement that income taxes are shifted with the utmost difficulty.

The foregoing is the economic theory of the incidence of business taxation. Even under economic theory, all or nearly all business taxes other than taxes on bare land, income taxes and fixed taxes imposed upon monopolies, cast a burden upon the consuming public that at least approximates, and in most instances probably exceeds, the amount of tax imposed on the business.

Notwithstanding that there may be marginal producers anxious to sell at cost, competitive business tends to establish a natural price consisting of the cost of production, plus the going rate of profit on the capital invested. A net income tax increases the cost of production the same as any other tax. To the extent that competitive business succeeds in establishing such natural price, the net income tax, when imposed on competitive business, is shifted the same as any other tax. The experience this country has had with the excess profits tax would tend to confirm this conclusion. Certainly that tax was not collected from all business, because a number had no excess profits, and yet no competent individual ever contended seriously that the excess profits tax did not increase the already high cost of living. Undoubtedly the supposed effect of the excess profits tax on the cost of living induced the two great political parties to advocate its repeal.

The inevitable conclusion, therefore, is that with the possible

exception of taxes imposed upon government-controlled business, most business taxes, including the income tax, are, as a general proposition, shifted to the consumer, with the chances that the burden borne by the consumer as a direct result of the tax is greater than the amount of the tax.

APPENDIX A

PRINCIPLES OF ECONOMICS, TAUSSIG, PAGE 515:

"Let us consider first the effects of the taxation of land by itself—of land irrespective of any changes or improvements made by man. For the purpose of considering this case, let us suppose an urban site of great value, not improved by man, or improved so slightly that the important and effective element in its value is the land *per se*. Not infrequently, in our American cities, a lucrative central site is occupied by a one-story flimsy shop, used for retail trade and commanding a considerable rental—one very high compared with the cost of erecting the building. This sort of utilization of the site is but temporary, due to hesitation on the owner's part as to when and how to secure the full economic rent of the site; or due possibly to uncertainty in the legal title and consequent unwillingness on the part of anyone to make improvements. Not uncommonly under these circumstances a cheap dramshop is erected, because such an establishment is most sure to yield a good rental, irrespective of the neatness or attractiveness of the building itself. Assume now that, for whatever reason, a valuable site is in this state. According to our American practise, it will be taxed on its full selling value as it stands—for a large sum as regards the land, a small one as regards the building. The total tax, at such a rate as is now common in our cities (say 2 per cent on the capital value), will very possibly be greater than the whole rental secured from the shop. Who would bear such a tax?

The owner would gladly shift it to the tenant, by charging him a higher rental. But clearly the owner cannot do so. Presumably the tenant is already charged with a rental commensurate with the profit-yielding possibilities of the site as it stands. The owner from the outset will exact all that can be got. The tax will enable him to get no more. Nor would a reduction in the tax cause him to be content with less; he would still demand and secure all that the site was worth. The tax falls definitely on the owner.

Such is the general proposition to be laid down with regard to taxes on land *per se*. They fall on the owner once for all. They operate as so much diminution of rent. In the extreme case, a tax equivalent to the full rent of land can be exacted, without any other effect than that of depriving the owner of his income. If a greater amount is assessed, the land, of course, will cease to be used; the owner and occupier alike will abandon it.

This proposition rests on the assumption that land is "rack-rented"—that the owner exacts in rent as much as he can possibly obtain. Such is not necessarily the case. Through ignorance

or carelessness, he may let a tenant have it for less than might be got by the sharpest bargaining. In a country like England, agricultural land is owned and managed for the satisfaction of social ambition as well as for immediate pecuniary return, and is not infrequently let to farmers on indulgent terms. Under such circumstances an additional tax levied on the landholder will probably lead him to look sharply at his rents and to take in all the slack. There is much discussion in England at present on the expediency of taxing ground rents; that is, of making a direct levy on the owners of sites. Those who advocate the measure lay it down with confidence that such a tax will affect the owners only, and will neither affect tenants nor raise the price of the articles produced (or sold) on the premises. They are right—provided that the land is already rack-rented.

Consider now the operation of such a tax if it has been long imposed at the same rate, and seems certain to continue indefinitely. Anyone who thereafter purchases the land will allow for the tax, and will pay a price based on its net return after the tax has been paid. This later purchaser will feel no burden from the tax; hence some persons are led to speak of this as "burdenless" taxation. It is burdenless, at the later stage, simply because the first owner has borne the burden once for all. In effect, a special permanent tax on his site amounts to the appropriation by the state of so much of the value of the site. Such appropriation may or may not be wise—this raises the whole question of the ground for private property in land and for the private title to economic rent. But the tax is burdenless only if it has prevented some part of the economic rent from ever getting into any individual's hands. And this, to be sure, is the case where a substantial tax on an *ad valorem* basis has been continuously levied on land.

These principles hold good of agricultural land as well as of urban sites. A tax on strictly economic rent in either case falls on the owner. We have seen that in the case of agricultural land it is peculiarly difficult to draw the line between the rent of land proper and the return on capital invested in the land; and for that reason the effect of a tax on agricultural land is in practise not so easy to follow. Yet there can be no doubt that there is a vast amount of land in old countries, and in the older parts of new countries, which is above the margin of cultivation and yields some rent; and to all such land the propositions regarding the effects of a tax hold good."

APPENDIX B

PRINCIPLES OF ECONOMICS, SEAGER, PAGE 500:

"The real estate tax must be subdivided into the land tax and the building tax because the economic effects of these two taxes, even though assessed at the same rate and as one tax, are very different. The part of the tax that falls on land is paid by the landowner whether he occupies the land himself or leases it to another. To understand why this must be the case it is necessary to recall how

the rent and value of prices of land are determined. The land supply of the country, determined broadly speaking by natural conditions, is divided up into different grades and each piece of land commands a rent depending upon the demand for land of that grade and the supply of such land and other land that might, if it were economically desirable, be devoted to the same economic use. Once determined by the competition and bargaining of landowners and landusers this rent will be changed only if some cause changes either the demand for, or the supply of, such land. Moreover the value of the land is this rent capitalized at the current rate of interest. There is no means by which the landowner can shift a tax on land proportioned to its rent or selling value to the lessor or user, because the latter is already presumably paying the full economic rent for it. If asked to pay more, he or some one in the group using the same grade of land will use instead land of somewhat inferior grade. The users of this land in turn, if asked to bear a part of the tax, will move to the land of still lower grade. Thus the attempt to shift the tax, there having been no increase in the demand for land—and there is nothing in the imposition of a tax to cause such an increase — is opposed by a moving away of lessors who are already paying all they are willing to pay. This resistance will continue until some have withdrawn entirely from the area over which the tax extends, with the result that land which was formerly occupied will be untenanted. The only way in which the landowners can recall the old tenants or attract new ones is by offering the land at the old rental, that is, abandoning the attempt to shift the tax to other shoulders.

This result is often concealed in consequence of the fact that the community in which the tax is imposed is growing and rents are advancing because the demand for land is increasing. If the land tax is small, the rise in rent—which would have occurred in any case—may reimburse landlords for the tax and give them the impression that they are shifting it to their tenants. What they are really doing, however, is paying it themselves by foregoing the larger increase in the income they derive from their land, which would have been theirs had no land tax been imposed. The conclusion to which we are brought, therefore, is that a land tax must be paid by landowners because it tends neither to increase the demand for land nor to reduce the supply, and it is only by increasing the demand or reducing the supply that the tenants generally can be forced to pay higher rents.

The land tax has another peculiarity. Since the value of a piece of land is its rent capitalized at the current rate of interest, the imposition of a tax that is to be collected year after year reduces the value of the land by an amount equal to the tax capitalized at the current rate of interest. Generally speaking, land is looked upon as an investment and will command that price that makes its return equal to that to be obtained from other investments as indicated by the current rate of interest. If the government imposes an annual tax and thereby takes from the landowner a part of his return it reduces the value of the land as an investment corres-

pondingly. As an investment the land is now worth the gross rent less the annual tax capitalized at the current rate of interest.

A numerical illustration may serve to make this clearer. Suppose that a piece of land affords a gross rent of $6000 a year, that the government imposes a tax that takes $1000 each year, and that the current rate of interest is five per cent. Under these conditions the value of the land for investment purposes will be $100,000 or the sum which, if invested at the current rate of interest, would bring in $5000, the net return from the land. If the tax is proportioned to the value of the land it will be at the rate of one per cent. Suppose now the government increases the land tax so as to take $1200 from the landowner while the rate of interest remains at five per cent. Under these new conditions the net return from the land is only $4800 and its value only $96,000. The tax rate is now one and one-quarter per cent. The increase in the tax rate by one-quarter of one per cent not only lowers the annual return to the owner by the amount taken by the tax (that is, $200) but what is more serious, it lowers the value of his property by $4000. He must not only pay the tax so long as he continues to own the land, but when he sells it he must submit to a reduction in the price which causes him to pay the tax for all time. The purchaser, on the other hand, who acquires the land with full knowledge that the tax must be paid each year, suffers no deduction from his income in consequence of the tax. Because of the tax he obtains the land for $96,000, or the sum which would yield the $4800 he is to receive from it each year if invested at the current rate of interest. If the tax had remained at the old rate he would have had to pay $100,000 for it. Had there been no tax at all, it would have been worth $120,000, as the return would then have been the full rent, or $6000. Thus a new land tax is a burden on the landowner upon whose land it is imposed, not only while he continues to be the owner but even when he attempts to escape it by selling his land. It amounts to a compulsory reduction in the investment value of his property.

With these peculiarities in mind what are we to say of a tax on land from the point of view of the principle that taxation should be in proportion to ability? The first conclusion to be drawn is that no tax is less open to objection than an old land tax. The proceeds of such a tax are drawn from the rent earned by the land. After the tax has been in force for a number of years and the land has changed hands at least once at the new valuation caused by the tax, it ceases to impose any burden whatever upon present landowners. The part of the rent which it diverts to the use of the government is a part which they never expected to control themselves. The remainder affords them as large a return as they could have obtained from any other form of investment, and they are entirely satisfied with the arrangement. It is for these reasons that real estate owners pay their taxes with so little grumbling. Nothing would surprise them more than to have their tax rate lowered—the basis of assessment remaining the same—and no policy would be so unfair to other taxpayers, since it would amount to adding gratuitously to the value of land for investment purposes.

A new or a higher land tax is a very different matter. If the population is growing and rents are going up the tax may be raised gradually without unduly burdening landowners. Under such circumstances the higher tax merely acquires for the government the increase in the rent, leaving the landowner's return on his investment undisturbed. If the increase in rent has not been anticipated by the landowner in the price he paid for the land and has followed generally changes in which he has had little or no part, its appropriation seems entirely unfair. But exactly adjusting a rising tax rate to rising land rents is a matter of much delicacy. What is very likely to happen, if the land tax is raised, is that it will cut into the income formerly enjoyed by the landlord and cause his land to depreciate in value. Such a policy clearly discriminates against landowners in comparison with owners of other sorts of property. Unless it is combined with other taxes in such a way that landowners are not singled out for exceptional taxation, it violates the principle that taxation should be in proportion to ability.

The effect of a tax on buildings is different from that of a tax on land simply because the supply of buildings may and in course of time will be controlled by investors in buildings with a view to escaping the tax. When a real estate tax is first imposed owners of buildings will have to bear their proportion of it as do owners of land. It will not cause any increase in the demand for buildings, nor immediately any decrease in the supply. But, unlike land, buildings wear out, are destroyed by fire, or for some other reason become unfit for use. In a progressive community there is added to the need of replacing old buildings a demand for new buildings to accommodate the growing population. If owners of buildings have to pay the tax on them—even when they own them as investments—the erection of new buildings will be unprofitable until the lessened supply coupled with the constant or increasing demand causes building rents to rise so as to fully cover the tax. Only after this has occurred will the erection of buildings again become profitable, because the tax has been shifted from the building owner to the occupier. Thus the part of the real estate tax which falls upon buildings tends to discourage building operations until building rents have risen to reimburse the owner for the full amount of the tax. Such taxes are paid, as soon as the community is fully adjusted to them, by occupiers or lessors rather than by owners. The question whether this part of the real estate tax satisfies our canon of fairness, thus reduces to the question whether the sort of a house or place of business a person occupies is a fair index to his ability to contribute to the support of the government. Generally speaking, the acceptance of this basis imposes disproportionally heavy burdens on the poorer classes in the same way, but not to the same extent, as do other taxes falling upon consumers.

Similar in effect to the tax on buildings is the tax on any special form of personal property that cannot be evaded, like the tax on mortgages in some of the states. At first such a tax makes investments in mortgages unprofitable as compared with untaxed investments. The balance is only restored when the interest on mortgages

is raised by the full amount of the tax and the burden is shifted to borrowers. It needs no extended argument to prove that a tax upon borrowers in proportion to the extent of their indebtedness has little relation to the principle that taxation should be in proportion to ability.

Even more obvious is the injustice of what remains of the general property tax, that is, the tax on highly scrupulous personal property owners, who obey the law strictly, while their friends and neighbors take advantage of the many easy means of evasion. The portion of the tax violates every principle of fairness and reasonableness and brings the whole general property tax, of which it is a part, into merited disrepute.

To sum up our conclusions in reference to the general property tax. That part which falls upon land, if the tax has been long in operation, is paid out of rent and is virtually burdenless to present landowners; when the tax is first imposed, on the other hand, unless it is exactly adjusted to gradually rising rents, this part imposes a special burden on landowners which is only fair if other individuals are similarly burdened at the same time. That part which falls upon buildings or any other special form of investment, while other forms of investment are permitted to escape, falls upon the occupier or borrower as distinguished from the owner or lender. Finally that part which penalizes honesty, unlike the rain, falls upon the just, but not upon the unjust."

APPENDIX C

OUTLINES OF ECONOMICS, ELY, PAGE 707:

"A poll tax upon laborers, for instance, will in our opinion not be shifted, as it is likely to lower their standard of living, stimulate the birth rate, and in turn (other things being equal) actually reduce wages."

APPENDIX D

THE WEALTH OF NATIONS, ADAM SMITH, PAGE 341:

"What are called poll-taxes in the southern provinces of North America, and in the West Indian Islands, annual taxes of so much a head upon every negro, are properly taxes upon the profits of a certain species of stock employed in agriculture. As the planters are, the greater part of them, both farmers and landlords, the final payment of the tax falls upon them in their quality of landlords without any retribution.

Taxes of so much a head upon the bondmen employed in cultivation seem anciently to have been common all over Europe. There subsists at present a tax of this kind in the empire of Russia. It is probably upon this account that poll-taxes of all kinds have often been represented as badges of slavery. Every tax, however, is to the person who pays it a badge, not of slavery, but of liberty. It denotes that he is subject to government, indeed, but that, as he has some property, he cannot himself be the property of a master. A

poll-tax upon slaves is altogether different from a poll-tax upon freemen. The latter is paid by the persons upon whom it is imposed; the former by a different set of persons. The latter is either altogether arbitrary or altogether unequal, and in most cases is both the one and the other; the former, though in some respects unequal, different slaves being of different values, is in no respect arbitrary. Every master who knows the number of his own slaves, knows exactly what he has to pay. Those different taxes, however, being called by the same name, have been considered as of the same nature."

APPENDIX E

ECONOMICS, HADLEY, PAGE 154:

"The increasing profit when we enlarge the output of a factory is often contrasted with the diminishing profit when we attempt to do the same thing on a farm; and some writers say that industries with large fixed capital are subject to a "law of increasing return" which contrasts with the law of diminishing return that prevails in agriculture. This statement hardly goes to the root of the matter. The distinction is not so much between kinds of industry as between kinds of capital. With a given amount of fixed capital, whether invested in agriculture or in manufactures, any increase of output diminishes the charges on such capital per unit of product. The *current* expenses per unit of product do not thus tend to diminish as the output increases; in fact, when a certain relation has been established between output and fixed capital, the current expenses per unit of product increase very rapidly. Whether, with an increase of output, the gain from fuller use of fixed capital offsets the loss from increased current expenses, depends partly on the amount of the fixed capital, but chiefly on the degree to which it was previously utilized. If it was not fully utilized we shall see the phenomena of increasing return; if it was already fully utilized, we shall see those of diminishing return. The apparent contrast between agriculture and manufacturing in this respect is chiefly due to the fact that population habitually approaches a limit set by the arts of food production, so that its agricultural improvements are always employed nearly to the limit of profitable output; while in manufactures there is no such increase of demand, and fixed capital is often quite inadequately employed."

APPENDIX F

OUTLINES OF POLITICAL ECONOMY, S. J. CHAPMAN, PAGE 420:

"*Taxes on Commodities and Services.*—This section will have no reference to import and export duties, which will be specifically treated later, nor to conditions under which supply is monopolized. *Taxes on commodities may be treated as additions to their costs of production. If the demand for a taxed commodity, in the supply of which competition rules, is wholly inelastic, its price must rise by the amount of the tax, and the incidence of the tax must be entirely on the consumers.* But the demand is never wholly inelastic.

Consequently, after a tax has been imposed on a commodity, less of the commodity will be bought, and the cessation of consumption will itself cause loss in the manner described above. Moreover, when a smaller quantity is produced than before, the marginal cost of production may rise or fall. If it rises, price will rise by more than the amount of the tax, and the loss of consumers will be increased accordingly. If it falls, the loss of consumers will be correspondingly reduced.

From these conclusions, two maxims may be deduced. The one is not to tax things the demand for which is elastic, other things being equal, when the prime object of the tax is revenue; because, when demand is elastic, a small tax will cause a large contraction of consumption. The other is not to tax things the production of which is subject to marked increasing returns, other things being equal, because to do so is to throw away the advantages of increasing returns.

The theory of the incidence of taxes on services is identical with that of the incidence of taxes on commodities. A commodity is merely a service indirectly rendered. And taxes on transfers of reproducible things, or on contracts relating to their provision (like stamp duties on bills of exchange), when they are indispensable, are evidently additions to the cost of producing or delivering things and are, therefore, to be classed with taxes on commodities.

Taxes on Monopolies.—A tax of a lump sum on a monopoly rests entirely on the monopolist, provided that his output is so arranged that his net takings are maximized, as it would tend to be in the absence of any of the limitations on his liberty of action discussed on page 190. If, in this event, he is taxed $1000 a year whatever his output, on reducing his output he would meet only with additional loss. A percentage tax on monopoly revenue would have a similar incidence, if we suppose that the trouble saved when output is reduced is practically negligible. A tax on the output would probably induce the monopolist to restrict his output, and thus some of the incidence would be on the consumers. But the rate of such a tax could be made so to rise with price as to stop restriction of output. Of course, were the tax in any of these cases so large as to swallow up the monopoly revenue and something more, the output would ultimately come to an end."

APPENDIX G

PRINCIPLES OF POLITICAL ECONOMY, MILL, PAGE 436:

"A tax on any one commodity, whether laid on its production, its importation, its carriage from place to place, or its sale, and whether the tax be a fixed sum of money for a given quantity of the commodity, or an ad valorem duty, will, as a general rule, raise the value and price of the commodity by at least the amount of the tax. There are few cases in which it does not raise them by more than that amount. In the first place, there are few taxes on production on account of which it is not found or deemed necessary to impose restrictive regulations on the manufacturers or dealers, in order to

check evasions of the tax. These regulations are always sources of trouble and annoyance, and generally of expense, for all of which, being peculiar disadvantages, the producers or dealers must have compensation in the price of their commodity. These restrictions also frequently interfere with the processes of manufacture, requiring the producer to carry on his operations in the way most convenient to the revenue, though not the cheapest or most efficient for purposes of production. Any regulations whatever, enforced by law, make it difficult for the producer to adopt new and improved processes. Further, the necessity of advancing the tax obliges producers and dealers to carry on their business with larger capitals than would otherwise be necessary, on the whole of which they must receive the ordinary rate of profit, though a part only is employed in defraying the real expenses of production or importation. The price of the article must be such as to afford a profit on more than its natural value, instead of a profit on only its natural value. A part of the capital of the country, in short, is not employed in production, but in advances to the state, repaid in the price of goods; and the consumers must give an indemnity to the sellers, equal to the profit which they could have made on the same capital if really employed in production. Neither ought it to be forgotten that whatever renders a larger capital necessary in any trade or business, limits the competition in that business; and by giving something like a monopoly to a few dealers, may enable them either to keep up the price beyond what would afford the ordinary rate of profit, or to obtain the ordinary rate of profit with a less degree of exertion for improving and cheapening their commodity. In these several modes, taxes on commodities often cost to the consumer, through the increased price of the article, much more than they bring into the treasury of the state. There is still another consideration. The higher price necessitated by the tax almost always checks the demand for the commodity; and since there are many improvements in production which, to make them practicable, require a certain extent of demand, such improvements are obstructed, and many of them prevented altogether. It is a well-known fact, that the branches of production in which fewest improvements are made, are those with which the revenue officer interferes; and that nothing, in general, gives a greater impulse to improvements in the production of a commodity, than taking off a tax which narrowed the market for it."

APPENDIX H

THE WEALTH OF NATIONS, ADAM SMITH, PAGE 57:

"There is in every society or neighborhood an ordinary or average rate both of wages and profit in every different employment of labor and stock. This rate is naturally regulated, as I shall show hereafter, partly by the general circumstances of the society, their riches or poverty, their advancing, stationary, or declining condition; and partly by the particular nature of each employment.

There is likewise in every society or neighborhood an ordinary

or average rate of rent, which is regulated too, as I shall show hereafter, partly by the general circumstances of the society or neighborhood in which the land is situated, and partly by the natural or improved fertility of the land.

These ordinary or average rates may be called the natural rates of wages, profit and rent, at the time and place in which they commonly prevail.

When the price of any commodity is neither more nor less than what is sufficient to pay the rent of the land, the wages of the labor, and the profits of the stock employed in raising, preparing, and bringing it to market, according to their natural rates, the commodity is then sold for what may be called its natural price.

The commodity is then sold precisely for what it is worth, or for what it really costs the person who brings it to market; for though in common language what is called the prime cost of any commodity does not comprehend the profit of the person who is to sell it again, yet if he sells it at a price which does not allow him the ordinary rate of profit in his neighborhood, he is evidently a loser by the trade; since by employing his stock in some other way he might have made that profit. His profit, besides, is his revenue, the proper fund of his subsistence. As, while he is preparing and bringing the goods to market, he advances to his workmen their wages, or their subsistence; so he advances to himself, in the same manner, his own subsistence; which is generally suitable to the profit which he may reasonably expect from the sale of his goods. Unless they yield him this profit, therefore, they do not repay him what they may very properly be said to have really cost him.

Though the price, therefore, which leaves him this profit is not always the lowest at which a dealer may sometimes sell his goods, it is the lowest at which he is likely to sell them for any considerable time; at least where there is perfect liberty, or where he may change his trade as often as he pleases.

The actual price at which any commodity is commonly sold is called its market price. It may either be above or below or exactly the same with its natural price.

The market price of every particular commodity is regulated by the proportion between the quantity which is actually brought to market and the demand of those who are willing to pay the natural price of the commodity, or the whole value of the rent, labor, and profit which must be paid in order to bring it thither. Such people may be called the effectual demanders, and their demand the effectual demand; since it may be sufficient to effectuate the bringing of the commodity to market. It is different from the absolute demand. A very poor man may be said in some sense to have a demand for a coach and six; he might like to have it; but his demand is not an effectual demand, as the commodity can never be brought to market in order to satisfy it.

When the quantity of any commodity which is brought to market falls short of the effectual demand, all those who are willing to pay the whole value of the rent, wages, and profit, which must be paid in order to bring it thither, cannot be supplied with the quantity

which they want. Rather than want it altogether, some of them will be willing to give more. A competition will immediately begin among them, and the market price will rise more or less above the natural price, according as either the greatness of the deficiency, or the wealth and wanton luxury of the competitors happen to animate more or less the eagerness of the competition. Among competitors of equal wealth and luxury the same deficiency will generally occasion a more or less eager competition, according as the acquisition of the commodity happens to be of more or less importance to them. Hence the exorbitant price of the necessaries of life during the blockade of a town or in a famine.

When the quantity brought to market exceeds the effectual demand, it cannot be all sold to those who are willing to pay the whole value of the rent, wages and profit, which must be paid in order to bring it thither. Some part must be sold to those who are willing to pay less, and the low price which they give for it must reduce the price of the whole. The market price will sink more or less below the natural price, according as the greatness of the excess increases more or less the competition of the sellers, or according as it happens to be more or less important to them to get immediately rid of the commodity. The same excess in the importation of perishable will occasion a much greater competition than in that of durable commodities; in the importation of oranges, for example, than in that of old iron.

When the quantity brought to market is just sufficient to supply the effectual demand and no more, the market price naturally comes to be either exactly, or as nearly as can be judged of, the same with the natural price. The whole quantity upon hand can be disposed of for this price, and cannot be disposed of for more. The competition of the different dealers obliges them all to accept of this price, but does not oblige them to accept of less.

The quantity of every commodity brought to market naturally suits itself to the effectual demand. It is the interest of all those who employ their land, labor, or stock, in bringing any commodity to market, that the quantity never should exceed the effectual demand; and it is the interest of all other people that it never should fall short of that demand.

If at any time it exceeds the effectual demand, some of the component parts of its price must be paid below their natural rate. If it is rent, the interest of the landlords will immediately prompt them to withdraw a part of their land; and if it is wages or profit, the interest of the laborers in the one case, and of their employers in the other, will prompt them to withdraw a part of their labor or stock from this employment. The quantity brought to market will soon be no more than sufficient to supply the effectual demand. All the different parts of its price will rise to their natural rate, and the whole price to its natural price.

If, on the contrary, the quantity brought to market should at any time fall short of the effectual demand, some of the component parts of its price must rise above their natural rate. If it is rent, the interest of all other landlords will naturally prompt them to

prepare more land for the raising of this commodity; if it is wages or profit, the interest of all other laborers and dealers will soon prompt them to employ more labor and stock in preparing and bringing it to market. The quantity brought thither will soon be sufficient to supply the effectual demand. All the different parts of its price will soon sink to their natural rate, and the whole price to its natural price.

The natural price, therefore, is, as it were, the central price, to which the prices of all commodities are continually gravitating. Different accidents may sometimes keep them suspended a good deal above it, and sometimes force them down even somewhat below it. But whatever may be the obstacles which hinder them from settling in this center of repose and continuance, they are constantly tending towards it."

APPENDIX I

Outlines of Economics, Richard T. Ely, Page 201:

"The monopolist will normally endeavor to fix his output at such a point that, given the existing state of demand, he will secure *the highest possible net returns.* On the one hand he has to face the fact that although he can increase his gross receipts up to a certain point, by increasing his output, yet the increase in gross receipts will not be proportionate to the increase in output, for the simple reason that the increased output will not find buyers except at a lower price per unit. On the other hand an increase in his output will always increase his aggregate expenses of production although here again the increase (in expense) may not be proportionate to the increase in output. In particular there are likely to be some permanently fixed expenses which will be the same for a small output as a large one, and there may be other expenses which will not increase unless the output should be made much larger than would be profitable. Indeed, it may often happen that the fact that a large output would make it necessary to increase certain expenses which would otherwise be fixed (such as the cost of the plant) may lead the monopolist to choose to produce a relatively small quantity of goods. The following table shows in parallel columns the number of sales of a monopolized good at different prices, the total resultant receipts, the variable expenses, the fixed expenses, the total expenses, and, finally, the net revenue or monopoly profit. For the sake of simplicity it is assumed that all of the fixed expenses are permanently constant, at least for such possible increase of output as the monopolist cares to consider.

Study of the table will show that, in the case assumed here, the monopoly price will stand at six cents. It would be possible for the monopolist to produce 5,500,000 units, for this would give him a net profit of $5000. But since he can control the supply, he will limit his output to 2,500,000 units, giving him the maximum net return, $25,000.

Price Per Unit	Number of Sales	Total Earnings	Variable Expenses Per Unit	Total Variable Expenses	Fixed Expenses	Total Expenses	Net Revenue
$0.10	600,000	$60,000	$0.03	$18,000	$50,000	$68,000	$— 8,000
.09	800,000	72,000	.03	24,000	50,000	74,000	— 2,000
.08	1,200,000	96,000	.03	36,000	50,000	86,000	+10,000
.07	1,800,000	126,000	.03	54,000	50,000	104,000	+22,000
.06	2,500,000	150,000	.03	75,000	50,000	125,000	+25,000
.05	3,500,000	175,000	.03	105,000	50,000	155,000	+20,000
.04	5,500,000	220,000	.03	165,000	50,000	215,000	+ 5,000

But the case assumed here is in many ways far simpler than the cases presented by real life. The monopolist may not be able easily to hit upon just the price that will yield maximum net profits. He may, by experimenting a little, approach more closely to it, but at best he can hardly hope to reach more than an approximate maximum. Or it may be that the monopoly is one in which the price is fixed by custom or convenience (as is in some measure true of street railway transportation), so that the monopolist can vary only the quality of the commodity or service he sells at the established price. Moreover it should be noted that the price most profitable for the present may not prove the most profitable price in the long run. The monopolist may choose to forego some of his possible profits this year in order to extend the field of demand for his product and to lay the foundation of a long-continuing period of profitable production. Furthermore, in view of the possibility of the public regulation or public ownership of his business, he may deem it expedient not to arouse public hostility and so may decide to sell at a price lower than what would, for the time being, be the most profitable price.

The Effect of a Tax.—Our numerical illustration may be made to convey a lesson regarding the influence of taxation upon monopolies and monopoly price. Fixed expenses have no influence in determining the price. If, therefore, a fixed tax, say of $5000 a year, were to be laid upon this monopoly, it would not result in an increase of price. A study of the table will show that with such a tax the net revenue at price .08 would be $5000; at price .07, $17,000; at price .06, $20,000; at price .05, $15,000; at price .04, nothing. Thus price .06 will still be the point of maximum net revenue and hence the monopoly price. On the other hand, a variable tax, for instance a tax of one cent per unit, would result in this case in raising the monopoly price. In our illustration, such a tax would make the net revenue at the price .08, $2000; at the price, .07, $4000; at the price .06, nothing; at the price .05, $15,000. Thus though the monopoly would find its profits greatly curtailed by such a tax, consumers would be compelled to pay one cent more per unit for the monopoly product. The possible advantage which society might draw from the tax would, therefore, be wholly or in

part offset by the increased cost of the commodity. We may conclude, therefore, that fixed taxes, or taxes on the net revenue of a monopoly, cannot be shifted wholly or in part by a change in price; while taxes laid in proportion to the amount of business, since they contribute an addition to the variable expenses, may be wholly or in part shifted by a change in price."

APPENDIX J

CAN A PUBLIC UTILITY SHIFT ITS TAXES TO ITS PATRONS

CARL C. PLEHN

(Reprinted from Monthly Bulletin of the National Tax Association)

Who bears the burden of a tax on a public utility? Is it the stockholders of the company or is it the persons served by the company, or is the burden divided between them?

The answer to this question was involved in a recent case in the courts of New York (*Jamaica Gas Light Co.* v. *Nixon,* etc., N. Y. L. J., Feb. 14, 1920). In this case the court assumed that the federal income tax levied on the net income of, and paid by, the company was a tax on the net profits, and hence could not be considered an expense of the company in fixing the rates which the company might be permitted to charge for its services.

While the particular decision is somewhat confused by calling the income tax an "excess profits tax" (as though any public utility can in these days earn an *excess* profit!), yet the thought is sufficiently clear. It is that the income tax is intended to be a tax in proportion to everyone's net income and is a personal tax. If, therefore, the rates which the regulating commission allows the utility to charge its customers give the stockholders a fair return on their investment, the income tax levied on that fair return is a matter subsequent to, and outside of the considerations properly entering into the computation of the rates. "It (the company) should not be permitted to reimburse itself from its customers because of such contribution." All of which seems to be good legal doctrine.

Much more interesting, however, is the underlying assumption that the company, if permitted to try to do so, could reimburse itself from its customers because of any tax. This is an assumption distinctly untrue.

Of course, any rate-making body which acts too literally on the legal theory embodied in the decision above referred to, may find that capital is not forthcoming for the replacements or betterments needed by the utility and that the public will suffer more, possibly, from poor service than it would suffer from higher rates. This will undoubtedly be the case if the stockholder should happen to find that the so-called "fair return" on his investment after being reduced by the income tax is less than he can get by investing his money somewhere else. So it may very well be that the rate-making body will find that it has won an empty victory in this decision. This legal theory is a sound guide in practice only if the

income tax imposes a uniform burden on all. If it does not, then the theory applies only to a non-existent hypothetical case.

The assumption above referred to raises an interesting economic question of fact, namely, what is the incidence of a tax on a monopoly? Economic writers have quite generally inclined to the view that a tax on a monopoly cannot ordinarily be shifted, or if shifted at all, can be shifted only in part. This general principle they are given to modifying in the case of some taxes, as for example, a customs duty, which in their nature are only advanced by the monopoly. Business men, however, seem, with great unanimity, to assume the exact opposite. I have met but few business men who do not believe that the monopolist will add *all* his taxes to the price or rate he charges and thus joyfully pass the burden on, unless he be prevented from doing so by the law or by regulation. These business men do not stop to explain what kind of poor fools the managers of a monopoly must be who, having this assumed power to raise rates at will, do not raise them, tax or no tax. But we may let that point go.

It has occurred to me that part of the difficulty which shrouds this question comes from centering attention on the shifting and incidence of the tax alone, and that we may get a more useful view if we try to look at all the more immediate effects of the tax, and not merely to search for the person who bears the burden of the tax *per se*. You get a poor idea of a forest by looking steadfastly at one tree only. The point may be illustrated in quite a different field of taxation. A customs duty, we readily admit, is shifted to the consumer of the imported goods. But that is only a part of its effects. If high enough it cuts down consumption, depriving would-be consumers of the wares, it lessens the importer's trade and hence cuts down his profits, it also deprives the manufacturer of the goods of a chance for profits and his workmen of a chance for wages. Merely to say that the tax is shifted tells but a small part of the story.

The following seem the most essential questions for our present purpose: If a tax is imposed on a monopoly, will the rates go up, and how much. If they do go up who loses most, the monopolist or his customers? Of course if the rates do not go up it may be assumed that the monopolist bears the whole tax. Answers to these questions will by no means exhaust the effects. But they place us where we can see some of them clearly.

Possibly the simplest illustration we can choose is a tax in proportion to the gross receipts. Other forms of taxes will vary in their effect but to discuss them all would take much space. Again, a street-car company will furnish an excellent base to work on, for its receipts are practically of one sort only. Let us, then, seek an answer to the straightforward question: What will be the effects of a tax of 10 per cent on the gross receipts of a street-car company?

A tax on the gross receipts of a street railway monopoly will raise fares a little, but not nearly enough to reimburse the company for the tax and will very materially reduce its profits. ("Raise" and

"reduce" are both used with reference to an assumed time when there was no tax.) Moreover, the loss of profits resulting from the tax comes in such a way that no regulating board, no matter how well inclined, can by raising the rates or fares restore the company's lost profits, even though the rates or fares were very low before the tax was imposed. At best it can help restore only a part of the tax, and never put profits back to the same sum as before.

The above conclusion was reached with the assistance of a mathematical friend (Prof. F. R. Macaulay of the University of California) and the formula, which will not be presented here, stands at the disposal of the mathematically inclined. The theorem can, however, be explained, if not so conclusively proven, without resort to a mathematical formula. To explain the theorem we have to examine: (1) amount of travel, and hence the company's receipts, at the several different rates of fare, and (2) the expenses as they vary with the different amounts of travel.

The Number of Passengers at Different Rates of Fare

Raising fares means loss of passengers. At one dollar a ride there would be very few to ride; at ten cents a ride, less than at five cents.

Lowering fares will increase the travel. Of course not forever. For if everybody who had the slightest excuse or inclination to ride did so at ten cents a ride, no more would ride at one cent. Impractically high and impractically low rates need not be considered. The practical question falls within a range of possibly five cents—say from five cents a ride to ten cents.

There will be less fares taken in at six cents a ride than at five cents, still less at seven or eight or ten cents. What happens when fares go up even a little is that some people walk short distances which before they rode, and others plan to do more errands on each trip, making less trips. Just what the figures would be we do not know because street railways cannot make experiments with the different rates and, what is more important, surrounding conditions do not remain the same. But we do not need to know them, for the theorem above stated does not depend on any particular relationship of the number of passengers to the fares, *provided only that there is a continuous drop in the number of passengers as fares rise.* If more people will ride at six cents than at five cents my whole argument is destroyed. But I believe no one will refuse to grant me the essential premise that fewer people will ride the higher the fare.

The Nature of Street Railway Expenses

Of the expenses of a street railway a very large part run on whether there are many passengers or only a few. A relatively smaller part of the expenses vary directly with the number of passengers carried. The same roadbed and rails which carry a hundred cars a day will have to be there if there are only fifty cars to

pass over them each day. A car that would carry twenty-five passengers (or any other number) will have to be run even though it is never quite filled. On the other hand, two full carloads of passengers require twice as many platform-men and twice as much oil and power as one carload. The distinction is simple. There are: (1) fixed or overhead expenses which are less per passenger the more passengers there are, and (2) traffic running expenses which are substantially the same amount per passenger, be the number great or small.

The following table illustrates very roughly the effect of these combined elements on the net profits of a company. The figures themselves are round numbers and simplified so that the calculations will not require pencil and paper. I have purposely exaggerated the probable decline in passengers carried in order to avoid difficult small fractions. But whether the drop in passengers carried per day be from 150,000 at five cents to 100,000 at seven cents, as assumed, or only from 150,000 to 140,000 or 149,000 the general principle is the same, provided the drop is continuous for all rates. Of course, also the effect is not so large if the tax is lower. Ten per cent is used only because it is so simple to calculate and being large avoids the difficulty attendant upon examining small fractional differences. Nor does the argument depend upon assumed ratios of the fixed or overhead expenses to the variable expenses. The only assumption necessary to the argument is that the expenses per passenger are lower the larger the total number carried, which is always true in the street railway business.

Rate of Fare Cents	Average Number of Passengers Carried per Day	Gross Receipts	Fixed Expenses	Variable Expenses, 2c. per Passenger	Total Expenses	Net Profits Before Tax	Tax 10% of Gross	Net Profits After Tax
5....	150,000	$7500	$3500	$3000	$6500	$1000	$750	$250
6....	122,500	7350	3500	2450	5950	1400	735	665
7....	100,000	7000	3500	2000	5500	1500	700	800
8....	82,000	6560	3500	1640	5140	1420	656	764
9....	67,500	6075	3500	1350	4850	1225	607	618
10....	55,000	5500	3500	1100	4600	900	550	350

It is obvious that if there were no tax, and the company could fix the rate of fare where it pleased, it would probably fix the rate at seven cents, for at that rate it makes a profit of $1500 per day, which is larger than it would get at any other rate. Closer inspection of the table shows that if it were possible to collect fares in fractions of a cent, the company might prefer to fix the rate at about 7.05 cents, for it will be observed that the profits fall away a little faster below seven cents than they do above seven cents, indicating that there is a maximum profit at a rate somewhere between seven cents and eight cents greater than at exactly seven

cents. But as the difference between $1400 at six cents and $1420 at eight cents is small it would be but a trifle over seven cents.

At first glance the reader might infer that the company would also make the largest possible profit after paying the tax, if it charged seven cents as before rather than any other rate. For if it went up to eight cents it would make only $764 as against $800 at seven cents. But again one must carefully observe the figures above and below the seven-cent line. The drop from $800 at seven cents to $665 at six cents is a drop of $135, while the drop from $800 at seven cents to $764 at eight cents is only $36. This is a greater proportional difference than before the tax and is too great a difference to be neglected. It indicates that there is a maximum profit greater than $800 to be had somewhere between seven cents and eight cents. A separate calculation which it scarcely seems necessary to introduce here shows that at seven and one-quarter cents the net profits after paying the tax would be about $812 and that is the maximum profit it could obtain at any rate of fare. The interesting and vitally important thing is that this *after-the-tax maximum profit* always corresponds to a *higher rate of fare* than does the *before-the-tax maximum*. It is never much higher but always higher. With the particular figures used in our illustration it was 7.25 cents as against 7.05 cents, approximately.

It was stated above that no public utility commission can restore to the company its lost profits or reimburse the whole tax. Humpty-dumpty profits made his fall when the tax was imposed and can't be put together again as long as the tax continues. If before the tax went on, the legal rate in the illustration were five cents (which, everything considered, was far too low) and the profits were, as in the table, $1000, and if after the tax the company were permitted to raise the rate to seven cents, it would still be $200 shy on former profits.

To sum up, then, the effects of the tax are: (1) a slight raise in rates (if permitted), (2) if rates are raised a goodly number of people walk or stay at home, or ride in automobiles who would otherwise ride on the cars, (3) the profits of the company are inevitably lessened, whether rates are raised or not, (4) new capital is consequently harder to get, and (5) if rates are raised less platform men and other workers find employment.

Economists have been wrong in so far as they have assumed that the tax on a monopoly cannot be shifted at all; right, however, when they contended that it could be shifted in small part only. Business men are all wrong in assuming that profits can be kept intact by simply passing the tax on to the consumer.

We may leave the reader to draw his own conclusions as to the practical application of the knowledge thus won, and as to what will be the best public policy to pursue. These are matters beyond the sphere of taxation.

APPENDIX K

PRINCIPLES OF ECONOMICS, SELIGMAN, PAGE 248:

"Since, therefore, there is in case of competition no uniform cost, the question arises, when we speak of prices depending on cost of production, which cost? It can manifestly not be the lowest cost. If at any moment there are five firms supplying the entire market for cotton goods, at a cost to each of six, seven, eight, nine and ten cents a yard respectively, it is clear that the price will not be six cents, for all except the six-cent producer would then lose money and stop. Nor can the price be fixed by the average cost of production, as is often carelessly stated. For if the price were the average cost, that is, eight cents, the nine- and ten-cent producers would lose and withdraw their capital. As long as the demand is large enough to keep all the producers in business, the price must be ten cents—corresponding to the greatest or maximum cost. It cannot be lower than ten cents, for otherwise the ten-cent producer would step out; it cannot be higher than ten cents, because in their mutual endeavor to capture more of the market the price will be kept down to the lowest point consistent with continuous production.

This maximum cost may also be called the marginal cost of production, because the ten-cent producer is just on the margin of withdrawing. He neither makes nor loses. All the other producers—the intramarginal producers—earn a profit represented by the difference between the cost to them and the selling price. The six-cent producer makes four cents on each yard, the seven-cent producer three cents, and so on. But the ten-cent producer only covers expenses.

If we could conceive of society at a given moment, with no changes in population or fashion or supply of capital or technique, this condition would be permanent. The marginal producer would just barely make both ends meet, but would earn nothing above his cost. But although society is never permanently in such a state, the condition may at any given period be said to be realized. At every season when goods are thrown on the market the seasonal supply may be deemed fixed. The cotton prints that are sold this year were made months ago. According to variations of demand from day to day the market price will change, but the oscillations during this particular season will move about a central point of normal price which, so far as the supply for this season is concerned, depends upon the maximum cost, that is, the cost of producing the most expensive increment in the actual supply. Whatever the daily fluctuations of market price may be, the normal price for this season will be ten cents a yard. At any given period cost of production means maximum or most expensive cost.

CHAIRMAN PLEHN: The whole matter under discussion is exceedingly interesting, and the stimulating papers are now open for discussion, under the rules.

MR. E. P. DOYLE (of New York): I want to say that it is the universal practice of owners of property to shift the land tax to the tenant. If we have a house costing ten thousand dollars or an apartment costing ten thousand dollars, we usually figure seven per cent for interest, six per cent interest on the mortgage, and an additional one per cent for searching title or cost of renewing the mortgage, and for various other incidental expenses. We figure three per cent taxes. The tax rate is 2.74, but then we are always getting an assessment for some additional public improvement, making ten per cent; and then we figure two per cent for repairs, one-half or one per cent for obsolescence, and a certain percentage for insurance and management, so that on a ten thousand dollar apartment or ten thousand dollar house we must get $1,600 a year rent. If we furnish elevator service and other services, we usually add an additional amount; so that on most apartment houses we must get at least twenty-one per cent on the investment — or on buildings of that kind.

If three tenants are after the same apartment, and there are no rent laws as we have in New York, of course then the landlord tries to get additional profit, but he always puts the tax on the tenant, and of course the courts in New York, under the rent laws, are forcing you to make a bill of particulars and they allow you to put the tax on the tenant. If there are three apartments seeking one tenant, we always keep the basic rent, if we can, but we offer three months' rent free, or pay the cost of moving, or offer to do over the apartment, or give some special privilege, in order to get the tenant, but we always try to keep that basic rent; and in the City of New York, where rents amount to a billion dollars a year, and the tax on real estate—we have a constitutional limit there of two per cent for city purposes—amounts to about 280 millions of dollars, I think it is universal that that tax is shifted to the tenant.

MR. WILLIAM FRANKLIN (of Oklahoma): How about farm lands?

MR. DOYLE: We haven't very many farm lands in New York City.

MR. MCKENZIE: I should like to ask the gentleman a question. What happens when the condition arises such as you have in New York now, when there are a good many of the more recently erected office buildings with many floors that have no tenants, and the office buildings are looking for tenants?

MR. DOYLE: The proper thing is to cut rents.

MR. MCKENZIE: That is the point I want you to admit.

MR. DOYLE: The man that has that building ultimately loses his equity.

Mr. McKenzie: That is what happens; he figures he is not always able to do it.

Mr. Doyle: He tries to do it. A great many of the property owners in New York now put in their leases that increase in taxes shall also be paid by the tenant.

Mr. McKenzie: I should like to comment on Mr. Zoller's last statement that where a number of business concerns in a special industry had practically a uniform cost and sold at a uniform price, the additional tax would be added. Now, that seems to be a rather plausible statement, except that what Mr. Zoller was talking about was a monopoly, whether it is so denominated or not, and he had before that told us what happened in the case of a manufacturer that did not add anything to the price and could not. You take the instance which he suggested; these gentlemen who are doing business together over the telephone, have all fixed their prices at the highest productive point, and if you are putting a tax on them, they are not going to rest, because the business will not stand it.

Mr. Zoller: The answer to that is that they do not do business over the telephone. That is because the laws of this country prevent that sort of thing. But I do believe that in any well-regulated line of business, costs tend toward uniformity, even though they never discuss the matter with each other over the telephone; when their price is made to the consumer, they have in mind the competition that they know they have in that industry, and they know to some extent just about what that competition is.

Now, as a matter of fact, if you are manufacturing something that takes pig iron, they may have a supply of pig iron bought at a certain price, but if pig iron has gone down at the time the order comes in, the price is going to be fixed upon the present price of pig iron, even though that shows a loss on their books, because they know that their competitor is going to do the same thing; and if the price of pig iron has gone up, their price is fixed upon a higher price of pig iron, because they believe their competitor is going to do the same thing. This talk about getting together and fixing the price is ridiculous and foolish, because it cannot be done.

Professor Page: I think that the papers we have heard this morning, while they are all interesting, illustrate a rather common tendency, which is to reach general conclusions and to lay down broad principles and to find in support of them illustrations and examples that are drawn from very temporary and sometimes somewhat spasmodic conditions.

The fallacy that has occurred in the arguments of some of these gentlemen rests on the fact that they have attempted to show long-time influence, and they have based the evidence on what we call

current prices. Now, there is a great deal of difference between current price and long-time price, and the things that affect current prices are very different from the things that are apt to affect long-time prices.

There is occasionally a little lack of logic in the presentation of some of these gentlemen, as when Mr. Zoller, appealing to the President of the United States as an ally in what he says, tells us that the taxes that are imposed are going to be paid by the consumers, we are all going to suffer by reason of that, and yet he tells us at the same time that the taxes are going to hamper and cripple and practically destroy business.

MR. ZOLLER: I did not say that.

PROFESSOR PAGE: Is business going to be destroyed or hampered, if the consumers are going to pay the taxes? If the consumers are going to bear the burden, then business won't have to bear the burden. If business is bearing the burden, then the taxes are not shifted to the consumer. Somebody has to bear the burden. It is inevitable that you cannot raise three thousand million dollars of taxes, as the Federal Government will have to do, without imposing a burden somewhere; in fact, that burden is going to be borne in part by the consumers and in part by industry, and exactly what part is going to be borne by each class or group of the population will depend upon the conditions that surround the special industry through which this tax is collected.

You cannot lay down general principles with regard to the incidence of taxation, which are going to be universally applicable, because this assumes that all other conditions are going to remain the same.

We can illustrate that, I think, perhaps by appealing to one of the most contemptuous of all taxes this country imposes, and that is what we call the tariff. It is claimed by a great many people that the burden of the tariff is borne by the American consumers, and it is claimed by a great many who are in favor of the protective system that the burden of the tariff, so far as it is a burden—and they deny it is much of a burden to anybody—is borne by the foreigner, that he has to pay the tariff, and that all the benefits come to us, and the foreigner bears the burden.

Neither is right. Take the duty that was levied on sugar in the Tariff Act of 1921. The duty was raised substantially on sugar. If that tax was going to be borne by the American consumer, it looks as if the duty would have raised the price of sugar in this country; still the price of sugar fell. Why was that? Because the conditions that then prevailed in this particular industry were such that there had been accumulated a large surplus of sugar, and the Cubans were not able to dispose of the sugar except in the American

market, they could not find a sale for it anywhere else, at a price that would pay them anything at all, and they had to sell their sugar in America at any price they could get; so it fell in this country, and it fell still more abroad. In time the Cubans sold that surplus, which led to a considerable reduction in the supply of sugar, with the result that in a lapse of about fifteen months the price began to rise. Then the Cubans were able to raise their price, and according to the investigation made by the United States Tariff Commission, the American consumer did pay the tax.

I mention that as an illustration of the fact that it is the particular conditions that prevail in the industry through which this tax is collected, as to what it is and who is going to pay the tax. You cannot always say.

You take the duty on wool. The American wool grower in July was selling his wool in this country at a price that, according to the Department of Agriculture, was eighteen cents a pound—I mean a scoured pound—less than the London price plus the duty. Why was it that the American wool grower could not get for his wool the full amount of the London price plus the duty we had put upon it? It was because, according to the Department of Agriculture, the manufacturer who was the purchaser of his wool could not sell to the American people woolen manufactures at a price which would recoup him for this additional price he would have to pay for the wool.

There was a very considerable and substantial falling off in the demand for wool manufactures at the prices that had been named by the wool manufacturers. The duty could not be shifted upon the consumer in that case, so far as the actual outlay of money is concerned. There was some shifting in the deprivation that the consumer had to undergo, because if he could not pay these prices for wool manufactures, he had to go without. In many cases he had to wear his old clothes longer. There were fewer purchases. There were fewer purchasers who were able to pay the price.

The same is true about many other industries. A manufacturer has got to make good in the long run, if he is going to stay in business on the same scale, or he has to take it out of the wages or out of the profits, or else he has got to suffer in some way.

All those additions to cost are not shifted entirely to the consumer; they are not borne entirely by the producer; there is an adjustment which is dictated by the special conditions of the industry involved. You take the cotton industry at the present time; the price of cotton goods has gone up a great deal, because the boll-weevil has eaten up so much of the cotton, and they have to pay so much for the cotton they buy. They have not been able to shift that addition on to the consumers of cotton goods, with the result that the cotton manufacturing industry, during this past

summer, has been in a depressed condition, which is probably more serious than any that has visited that industry for many years.

I merely want to say that you cannot lay down general principles and talk about long-term operations of these things and predict from them what the immediate effect of these changes in taxation are going to be upon the population or upon the industry.

Mr. W. M. Franklin (of Oklahoma): A few moments ago the gentleman from New York suggested that taxes on real estate were shifted or could be shifted; then he proceeded to give illustrations of taxes on apartment houses in New York City. Of course, it might have been a violent presumption on my part, but I asked about farms, assuming that while New York City was part of the United States, there are some parts of the United States not included in New York City.

Now, we do have farms, and because of his general statement that taxes on real estate were shifted, I wanted to ask the question, how they could be shifted on farms, where for years and years the rental is one-third or one-quarter. Your taxes may be altered, but the rental continues according to custom, one-third or one-quarter.

Mr. Douglas Sutherland: Mr. Holcomb has asked me to read a letter, a very brief one, received by him, under date of September 9th, from W. H. Maltbie, attorney, of Baltimore, Maryland.

"*Dear Sir:*

My attention was attracted to the letter from Mr. John Harrington in the June issue of the *Bulletin.*

I am not a tax expert, 'alleged' or otherwise, and therefore am not attempting to settle the question which Mr. Harrington asks to have settled. I wish simply to call his attention to the fact that I, in common with a large number of other users of office space, have a lease which provides that the rent shall be adjusted annually for variations in taxes; that the house I occupy is held under a lease which provides that I shall pay a fixed sum plus certain expenses, including taxes, and that as landlord I have at least two tenants who pay a fixed income on the investment, plus certain expenses and taxes. It would seem in these cases that the tax is undoubtedly passed on.

It seems to me that Mr. Harrington's difficulty lies in his statement that 'taxes on land are either passed on, or they are not.' My own feeling is that sometimes they are, sometimes they are not, sometimes they are in part, and sometimes they are not in part. Rentals, it seems to me, are determined by complex conditions which include the general cost of constructing, operating, and maintaining similar properties and the community standard of fair return. Modification of any one of these elements over a general area is apt to produce a change in rental over the area, but the changes may not be related to each other in constant ratio. If, for example, a single property has its assessment raised and tax increased, its rental will probably not be much affected, but if there is a general increase of tax burden it is almost

certain to reflect itself in a corresponding though not necessarily equal increase in the general rental scale.

Very sincerely yours,

W. H. MALTBIE."

This occurs to me, Mr. Chairman and gentlemen. I fear that some of the things that have been said in the conference this morning are going to be wilfully twisted and misconstrued by certain public officials who are interested in jobs mainly. I am not impugning all public officials, but there are plenty of the class I am about to describe, who will wilfully quote from certain portions of papers read this morning, in order to bolster up their claims that the government expenses and taxes may be as high as they wish them to be, and that they will not be felt by the public generally, but only by certain imaginary corporations and individuals of tremendous wealth, who can forever be Santa Clauses to the people at large. That is the inference to be drawn from these papers. Therefore I should like to ask, because Mr. Chairman, it is only fair to this conference and to the Association, which at the last session, at the very inception of the administration of President Bailey, opened what I believe will be a long-continued and successful campaign of education against excessive public expenditures, that we should here make it clear that we do not believe that government expenses can go without bounds.

Therefore, I should like to have these economists briefly address themselves to the question of whether or not Government expenses can be carried to any limit and not affect the public at large, whether through their character as consumers or whether through their character of being employed by the tremendous industries that are the backbone and wealth of the economic activity of the Nation.

PROFESSOR HUNTER: It appears that Professor Friday skipped out and left this to me. Before I attempt to take up Mr. Sutherland's proposition, I think I should perhaps make one correction, to be fair to the economists.

Mr. Zoller in his paper talked about the cost of production, but in that he did not include—he excluded, as a matter of fact, or I got it that way—any interest on the investment. Now, I think that any modern economist would be perfectly willing to, not only willing but does include in the words "cost of production," a fair return on investment, as well as depreciation. So, when we talk about the marginal man, we do include those items, and he can keep on producing; he has a depreciation account; he has a fair return on his investment, and so forth.

Now, to get to Mr. Sutherland's point, I grant him that if you want to dig out particular paragraphs in our discussions, you can say exactly what he did. I was careful to insert a paragraph in

my paper which said this;—that undoubtedly government taxes do enter into the cost of production, just as labor does, just as the cost of raw materials does. I cannot conceive of anybody continuing in business and having to pay a tax of a million dollars a year and continuing at a loss. My contention is that just because that tax is put on now, tomorrow the business cannot just say to the public: "I have a tax; you have to pay an increased price." I think that is true. I think the gentleman from New York hit the nail exactly on the head when he said this—he gave two illustrations—he said that when there are three persons for an apartment, we add the tax on; then we add a few other things, and a few other things until we may be able to get more than our depreciation and taxes and a fair return.

Now, what is going to happen? Another fellow comes along with a million dollars to invest. He sees an apartment house giving a bigger return, and he builds an apartment house, but the taxes on it, of course, are a part of his consideration when he figures on apartment houses. They are a part of his cost, and he figures on getting a fair return. What is the other situation, though, when the other case comes up, when we have three apartments seeking one tenant. There is where you have the other side of the situation. I am looking for some place to invest a million dollars, and I am not going to invest it in apartment houses. Why? Because I cannot get a fair return. It seems to me there is your whole situation. Over a period of time industry is bound to adjust itself, but for the time being I do not believe we can unload it.

There has been a lot of unwise reasoning. Just because there happened to be a coincidence of a rise in rents, a rise in prices, and a rise in taxes, you cannot draw the conclusion that one causes the other.

I don't know whether there is any more to be said on that or not. It seems to me that all the way through Mr. Zoller's paper and ours, the reasoning is practically the same; that we must always keep apart the long-run effect and the immediate effect.

There is another thing; let us all remember, that we are not living in a static state; population is increasing, our desires are changing, we are wanting one product now, and next month something else, and those are all factors. We cannot put our finger on a certain line of reasoning and say that is always going to hold. An economic law is a tendency and not an algebraic formula, such as Dr. Plehn has worked out.

Mr. Russell: In your reference to the physiocrats of France you stated their conclusion was to lay all taxes upon land; is it not true that it was on land value?

Professor Hunter: No.

Mr. Russell: A thing entirely different from land. In other words, what we call economic rent or ground rent.

PROFESSOR HUNTER: Yes.

MR. RUSSELL: That is what I was asking.

PROFESSOR HUNTER: Yes.

MR. RUSSELL: But you stated it was upon land in your paper. What we want is accuracy of statement. There is a great deal of difference between a tax on land and the value of land.

PROFESSOR HUNTER: Yes, that is true, but I thought I made that clear.

MR. DOUGLAS SUTHERLAND (of Illinois): I infer from what Mr. Hunter has just said, although I should like to be definite, that it is not the opinion of economists by any means that government expenditures can go to excessive extremes affecting every person in the community.

PROFESSOR HUNTER: I think the full answer to that is to read some of the statements of economists on that proposition.

MR. J. F. ZOLLER: I just want to correct a statement. I want to correct a statement that Dr. Page made about me. He said that I was inconsistent because I said in the first place that taxes on business were shifted, and then I said that business would be ruined because of excessive taxation.

Now, I anticipated him, and I particularly did not say that, and I can prove I did not say it, because when I opened my argument I called the attention of the audience to the inconsistency of these two statements, which is the position that he charges me with taking.

DR. PAGE: I withdraw the charge.

MR. ZOLLER: Just this one thing. I am not worried about business; and the reason I am not worried is because I believe these taxes can be and will be eventually shifted. Now, I am not opposed to taxes on business. It may be a convenient way of collecting taxes from the consumers, but I think we ought to know when we put a tax on business, who is going to be called upon to pay the bill.

MR. ATWOOD: Dr. Page made a statement which I wish to say—although I know very much less about the subject than he does—that I find confirmed absolutely in an investigation which I attempted to make this spring; not a very extensive investigation, but some of the results were interesting. He made the statement that the shifting of taxes depends upon conditions which might arise, and I have found in talking to many business men, that while most of them seemed to want to think that taxes are shifted, in actual experience, there are so many diversities of conditions and so many changes of conditions that they generally admitted that

the subject was one that cannot be generalized about. I merely want to add just that word to what Dr. Page said.

Mr. Hugh Satterlee (of New York): This discussion this morning has, for me at any rate, clarified the subject, more than any other discussion of it I ever heard before. It seems to me to bring out at least this one uncontrovertible fact. Whether or not taxes are shifted in any particular case, it seems to me, is not of prime importance. What is of prime importance is that, whether or not the tax be shifted, that particular tax, whoever pays it in the first instance or in the final analysis, is a burden on the whole community, and is just as much a burden as if it were shifted to one person or another.

Mr. Zoller's discussion, through his charts of the situation in reference to monopolies, was particularly illuminating to me as indicating in that case, and of course in a great many other cases too, that the tax may be shifted to the consumer and yet at the same time be a burden upon the manufacturer who pays it in the first instance. In other words, whether or not it is shifted, it is a burden on the manufacturer, and if it is shifted, it is a burden on the consumer also. But even in the case of these taxes, which it is agreed may not be shifted, such as a poll tax or a tax on unimproved land, aren't those taxes just as much of a burden on the entire community as if they could be shifted?

In the case of a tax on unimproved land, for example; although it may be assumed that it cannot be directly shifted, if it is so heavy that the land loses salable value, or if, in the case of a poll tax, the individual has such a heavy poll tax laid upon him that it diminishes his standard of living and makes it impossible for him to use his energies to as good purpose as he could otherwise; in other words, if it decreases his efficiency, as at least in theory it might and as a heavy tax certainly would, isn't that tax just as much a burden on the whole community as if it were directly shifted and spread over the whole community?

Now, it seems to me, as I have said, that that is the important thing. I think what Mr. Sutherland has said is very much to the point too, that it is silly and absurd to draw from anything that has been said this morning any idea, any notion, that attempting to impose taxes, however ingeniously framed, on one particular class in the community, is going to result in letting the rest of the community go scot-free. That is what has excited my indignation more than anything else, in what has been happening in Washington particularly during the last few years; what impresses me as the asininity of members of Congress thinking that by any form of taxation that can be devised, they can exempt or practically exempt large portions of the community from the burdens of taxation, by attempting to impose taxes on the rich or on any particular class of the community.

Secretary A. E. Holcomb, presiding.

Chairman Holcomb: You will notice a "shifting" that has been made here. I don't know why Dr. Plehn seized upon me to preside at this complicated session, and I do so with hesitation.

Mr. McKenzie: Shifting the burden.

Chairman Holcomb: I think he did that possibly because he could contain himself no longer. I call upon Professor Plehn to explain.

Professor Carl C. Plehn (of California): I shifted it because I wanted to speak, and I did not think it was quite right to take my seven minutes as chairman, when I belonged on the floor. I have played with problems relating to the shifting and incidence of taxation for very nearly forty years, as my pet hobby. I have found, in thinking about these things, and in trying to teach university students about them, that to get into the clear and stay there, we have to keep in mind two separate things. One is the mere shifting, the incidence of the tax, and the other is all the other effects that go with it and are consequences thereof. They are not really separable. I mean to say they go together, they are tied together, but we have to separate them for clearness of thought.

Let me illustrate. There isn't any particular doubt but what in most cases, and in the long run, the customs duty is shifted. The man who imports goods does not pay it, and while there may be a dispute as to whether he should charge it back to every one or altogether to his patrons is immaterial. He does not pay, and moreover he collects a little more than the taxes for the trouble and expense he has had in shifting it. But it is also perfectly clear that you can make that tax so high that it will cripple the importation, stop it altogether, if you like. It therefore follows that even a small tax diminishes the importation. Now, what are you going to say—that the incidence is on the producer, because he cannot sell his goods? Does he lose his profits because his business is curtailed?

One thing about Mr. Zoller's paper. He brought out clearly that whereas the tax that is paid, the money that goes to the government, might be said to come out of the monopoly profits, and diminish the monopoly profits, yet at the same time, it may have an effect upon the consumer and lessen the number of purchases. Isn't that exactly what the gentleman who last spoke meant by the statement that there is a burden on the community even in the case of a tax that is not shifted? The tax itself may not be shifted, the dollar that pays it may have been the dollar of the landlord, and he cannot get it back. We have not traced the whole matter out when we have said: Where does the dollar come from?

The railroad company cannot pay taxes, except from the dollars

it gets through shippers, but it may have to change its rates in order to get enough dollars to pay the tax, and if it does that it curtails the industry of the community by lessening the number of shipments and lessening the number of goods that can be transported.

Another thing we have to remember: it is very easy to universalize. You take up one tax and you find it is shifted or not shifted, and then you think you can put a whole lot of other taxes in the same class. Maybe you can and maybe you cannot. You have to consider each one and see if it is of the same class.

Not quite thirty years ago I made a very careful study of the mortgage tax in California. It was an isolated tax; it was the only tax that a man with money to invest was likely to pay, at that time, if he invested capital. It stood all alone; it was enforced for a while; afterwards they devised a method of getting around it. I went over all the records of the big banks in San Francisco with pains, taking item by item, and I found that the tax was shifted to the borrower, and that he paid approximately one-quarter of one per cent more than the tax, over and above the prevailing market rate of interest for investments that were equally safe. I did it with great care, and evidently it impressed somebody, for Mr. Judson of St. Louis told me afterwards that in a case which I have forgotten the title of, the supreme court of Missouri declared null and void the constitutional amendment which proposed to introduce in Missouri the same old California system. So the thing must have been impressive in its results anyway.

The point I want to bring home is, then, that aside from tracing the mere shifting—the movement of the burden from one person to another—aside from that, you have to consider that there may be a whole series of other effects from the tax, and those are even more important than the mere question of who bears the burden.

If you tax a railroad, you can tax them out of existence, you can tax them right off the map. Then what is the community going to do? That is, you can put the taxes so high that even if the railroad shifts them, the shippers cannot pay, and the business goes bad.

The other thing is, you have to consider your taxes one by one, and then assemble your results and find out the shifting and the effects of the composite whole, but you cannot generalize safely in your conclusions as to any one tax by itself.

CHAIRMAN HOLCOMB: I take it we ought really to adjourn. This has been a very interesting session.

I have an announcement, that the full committee on resolutions will meet at one-thirty P. M. promptly, in the small room opposite.

ADJOURNMENT

NINTH SESSION

THURSDAY AFTERNOON, SEPTEMBER 18, 1924

MR. OSCAR LESER (of Maryland), presiding.

CHAIRMAN LESER: Gentlemen of the Conference: It falls to my happy lot to be drafted to preside over this particular session of the conference. If I had the right to take a choice, this would be my choice.

I notice that all those on the program are not only old standbys of the tax conference, but they are all old personal friends of mine. Of the many of them no one is dearer to me than the first speaker, who is the president of this association. If he is a little hesitant in what he says; a little nervous, remember he is a young father, about five days old.

I now have the pleasure of presenting Mr. Bailey, the president of the association.

PRESIDENT WILLIAM BAILEY (of Utah): I thought I had kept that a secret. My friends, I want you to forget for a little while some of the splendid things that you have heard during this conference, and just let me talk with you. I am not able to deliver one of these flowery speeches, and I have just a few recommendations that I want to make to you that have come out of the observations that I have made during the year that I have acted as president of this organization. I can say to you that no pleasure which ever came to me was as great as when you made me your president a year ago; and I have done my best.

I feel that I must say a word in relation to my friend Holcomb. Certainly his whole heart is in this work, and the things he is doing I think a lot of you do not know. He is devoting a lot of time, and if I were out West I would say he is the whole damn cheese. If it were not for him, we should not have the association we have today, and best of all—say what you like to Holcomb, he won't ask a cent. I have learned to love him; and I know his heart is in the work, and that we are always safe as long as Holcomb is at the helm.

A year ago at White Sulphur a proposition came up through a speech made by ex-Governor Frank O. Lowden, in relation to the matter of public expenditures. He made a wonderful speech, and I have made the statement that he pretty nearly stampeded the

meeting; and a committee was authorized to go into this question of public expenditure. I fell in with it, and thought it was a splendid thing. I have been attending these conferences — and I have been at every conference we have had now during the past twelve years—we have come together and devised many schemes of taxation. There was the model tax plan, a very splendid piece of work. Other papers have been given here from time to time that have suggested this plan and the other, that we have taken and adopted in our own states in many instances, but I have felt that the same amount of work has not been done upon the other side of the story.

We have considered budget systems and things of that character; but we have not gotten down to the spending side.

So I took to this very kindly, and you authorized us to appoint a committee to commence work on public expenditures. We waited upon Governor Lowden and did secure his consent to head such a committee. He made a remark to me that I must tell you about.

A committee waited on him to ask him if he would head this committee. He said, "What do you fellows want out of it? Do you fellows want a job?" He said, "You know, everybody that has come to me in the last few years has wanted a job; wanted something out of it. I explained to him who Dr. Page and Mr. Holcomb and others were, and what they were doing. He said, "Boys, that is splendid, and I am with you, and I will go with you to the end. Whenever you are ready, I will commence this work."

Now, this question of the investigation of public expenditures means where are you going to begin and where are you going to end? That is the thought which came to the officers. Where should we begin? As Dr. Adams suggested, we might go at the question of the short ballot, the question of government aid, and the commission form of government; all of these have a bearing upon public expenditure. Where are we going to begin, and where are we going to end?

I felt, my friends, as the president of this association, that I could not afford to turn the matter over, even to a man as good as Frank O. Lowden, because this association would of necessity have to be responsible for the undertaking, whether it should be a failure or a success.

One or two other matters connected with it led me to believe that it should be done, notwithstanding the magnitude of the undertaking; and if you will bear with me just a moment or two I will give you one or two illustrations showing why I thought it should be done, and if I use my own state, you will pardon me, because I am better acquainted there.

In a little town not far from Salt Lake, about 2800 population, they were very ambitious; they wanted a high school, and immediately bonded themselves for $175,000 to build this school. The

last word in school building is in that structure; a hot point for every girl who is taking domestic science—I guess that is right—and a locker for every boy and girl. They have a swimming-pool; and the dads are quarreling now with the school board, because we want to use it; it is one of the finest things in the country. That is all right, but they have closed two delightful buildings.

Of course, you people know that Utah is the center of the scenic world. I am going to try to make you believe that, anyhow. We have the Grand Canyon on the south and the Yellowstone on the north; and we have some wonderful scenery down there. The automobile people have gone crazy over roads, as you will conclude, when I tell you that there are only 450,000 people in that state, and that since 1917, we have spent eighteen millions of dollars on our roads.

Now, in public life, as it is in private life, we are living mighty fast today. That is the way things are going; and for that reason I believe that we should make an investigation of public expenditures. I do not believe, however, that you are going to stop very much expense. I believe that the people are going to continue calling for public expenditures, as they are at the present time, and that your taxes are going to continue to rise. There will be some leaks that can be stopped; but I think that, generally speaking, what I have prophesied, will come true. For instance, as another illustration; out in my state they waged a wonderful campaign on expenditures. The present governor pledged himself as to what he would do; and during the four years he has been in office the expenditures for all purposes went from $18,000,000 in 1920 to $17,000,000 in 1923; and he bragged about it, and went from one end of the state to the other, telling what he had accomplished; but imagine his surprise when this year's figures became known, it was back to $18,000,000. It was done chiefly by the counties, cities and schools, and as far as your school expenses are concerned, they are going to go on; and I want to say emphatically that I believe the schools should have all the money that they need—don't misunderstand me; I do not think they ought to have all they want.

Seven years ago we collected for all purposes in the State of Utah $8,800,000 in taxes—from cities, towns, counties, schools and the state. In 1924 we collected $18,000,000—a jump from $8,000,000 to $18,000,000 in that length of time.

This is the point that has been concerning me during all these years: wherever you go they are complaining about taxes. I was speaking to a little audience a short time ago when a man introduced me as the tax man from Utah. He said: "If there is anything in this world that I hate, it is a tax man." I followed him, and got up and said: "I appreciate the gentleman's introduction,

and I should like to explain that I have never seen a tax-dodger in my life that did not hate him."

Be that as it may, the feeling is strong that we are laying too heavy taxes. I have seen it in my own state repeatedly. I have in mind an occasion when a number of men came to me one day and pleaded with me and threatened me if they were not allowed to put in a certain improvement; the following week I was there again, when they came in protesting with all the power they had against a certain levy.

I want to say this emphatically to all of you that the greatest job, and the most strenuous job that all you tax officials have is to protect the people against themselves.

I was asked to talk before the Rotary Club in one of the counties. They were lodging a bond issue for roads and the building of a courthouse. I really did not know that; they let me pick my own subject, and I spoke on the spending of tax money, and showed the people the amount of bonds that they had in that county; the amount of money they were spending each year; how it increased from year to year. I was scheduled for two talks, one in the afternoon and one in the evening; and when I got through, the chairman asked me to go back to Salt Lake. However, they kept me there. The bond issue failed, and some of those fellows hate me yet; but I think it is only a fair sample. The Honorable Mayor said here a few days ago that the per capita tax of St. Louis was only eleven cents a day, or that it was $40.02. In Utah, it is $37.00; but that is more than they can stand. I believe, however, that the best dollar that I spend is the tax dollar. I have seven children, so I know and you know that is true.

The point is, I doubt if you are going to stop this very much, but I will tell you what I think about this association, and this is my message to you today, and I really do want you to receive it in the spirit in which I give it, because I am sincere in what I want to tell you. I was very much pleased last night as I was talking to Mr. Winston; thanking him for quitting his busy life and coming down here to assist us in the splendid way he did yesterday. He said: "Mr. Bailey, don't mention it; it is a real pleasure. Your institution has grown to be the greatest influence of the kind in the United States—even in the world." He said: "It is a real privilege to me to come out and talk to you, and be one of you. You have greater influence than you know."

Now, I liked that. I think that is splendid. I have been with this association almost from its birth, and there is no greater pleasure I get, than coming here and mingling with you and seeing what you are accomplishing.

I know that this influence has been felt for good in every state in the Union. As I said in the beginning, though, we have been

going along lines of finding new methods of taxation, and some of these have been adopted; we have been doing this and doing it honestly, but if I understand the plea of the American people, if we want to do a real good turn, let us stop long enough to investigate where this money is going, let this institution go into the question of public expenditure, because these extravagances such as I have mentioned in my own little town where I live, will not be incurred, if the people have the tax expense clearly put before them. The most dangerous thing in the work is an overambitious tax man or public official. If the facts had been put before the people of my town, they would either have built a less pretentious building, one within their means, or else they would have stopped entirely.

Now, if the facts are put before them squarely, I will take my chances with the public. They seldom do know the facts; and I have often said that as far as the public is concerned, upon any new question, they are more often wrong than right, but give them time to get the facts before them and they will be right.

Now, if these facts are placed before them and they understand it, it will result in a more satisfactory taxpayer. If the people of my town had come to me with the question of this schoolhouse that I spoke of, I should have tried to induce them to be a little more moderate and then I should have been satisfied when I paid my tax. If you can accomplish this, you will have done much, because it is necessary for the tax authorities to get the money, but it is also necessary, in my opinion, to keep peace while you are doing it.

Now, then, I have this to recommend to you—and upon this subject I want to ask Dr. Page to make a few remarks and to also explain to you some of these things, as he understands them as Vice-President of this association—my recommendation to you is simply this: It is a big undertaking, it is a gigantic field, and is there any man among you today who can tell me just what he thinks should be done, to what extent he wants to investigate public expenditures; and where are you going to get the money to do it with?

In the model system you have done a splendid work, but not until that committee was appointed that traveled here and there and sat down together for a week and worked it out. That is what I want you to do with this. I recommend to you that you appoint a committee. I have a good man in mind who can get eight or nine men around him; let them study this for one year and go into the question, as to how much we want to do; what we are going to do, where we are going to get the money from before we start out. There certainly will not be anything lost by due deliberation; then let this committee come back one year from now

with a well-defined plan as to how we should do this job. I am sure it ought to be done, and I believe this association will make for itself a name, well worth while, all over the United States.

Now, as to why it has not been done during the past year; why we did not do it, I want to ask Dr. Page to explain.

Gentlemen, I thank you.

(The complete text of the address of President Bailey, which was the basis of his remarks, is as follows.—Ed.)

THE INVESTIGATION OF PUBLIC EXPENDITURES

WILLIAM BAILEY
Chairman, State Board of Equalization of Utah
President, National Tax Association

When the members of the National Tax Association met in conference at White Sulphur Springs last year they passed a resolution commending the executive committee for its selection of a committee to investigate public expenditures throughout the United States. The problem was discussed with enthusiasm in the meeting of the association and the resolution was passed with unanimous approval, but it is to be noted that no plan for the investigation was determined upon, nor was the extent of the investigation intimated. All this apparently was left to the committee to determine. In the meetings which the preliminary committee on investigation held to discuss this matter, some of the most pressing problems were brought up first. The question of finance was important, because the undertaking, by its very nature would be expensive and it would be necessary before commencing the work, for the committee to have ample financial resources to complete the task. Then, too, the problem concerning the nature of the investigation was an important one. The bureau of census collects and tabulates data showing the receipts and expenditures of state and local governments. All of this information could be placed at the disposal of the committee but there was a question as to whether the information of this type which was available was broad enough in its scope to be of use to the committee. In addition to this, a situation arose which was entirely disconnected with the tax investigation, but nevertheless had an important bearing upon it. While the committee was studying the problems which of necessity must be solved before actual work was commenced, the now famous oil investigation was started in Washington. It was carried to such an extent that the term "investigation" became obnoxious to most American citizens. The conclusion which the preliminary committee reached, after it had considered the points just mentioned, as well as many other matters which time will not permit

discussing now, may be briefly stated as follows: In the first place, the investigation is to be conducted by a committee representing the National Tax Association. The association, therefore, will be held responsible for the success or the failure of the investigation and should determine the nature, the purposes and the extent of the investigation before the committee commences its work, and in addition to this the association should determine upon a definite plan for financing the proposition, in order that ample funds will be available for the work. This conclusion was reached in full view of the fact that a course of this kind would require some time before the actual work could be commenced, but the committee decided that this would be the only safe plan to follow, because an investigation which was started without proper consideration or without the construction of the necessary foundation upon which to build could not succeed and any information that was hastily secured, without having well founded aims in view, might prove of greater harm than value.

With these considerations in view, let us consider a few of the factors which should have weight in the minds of the association members when they determine upon the specific plan for this investigation. In the first place one naturally wonders whether it is possible to bring about a reduction in public expenditures. If we are to take into consideration the history of taxation in the United States we must necessarily conclude that there has been a continual increase in public expenditures; that while there have been periods when the total expenditures have decreased, as compared with the year previous, still the general effect has been an increase in the total and in the per capita amount expended. Are we safe in concluding that the events of the future may be judged by the course of public expenditures in the past. Each one of you can answer that question for himself and base his conclusion upon the facts which have existed in his own community. I have thought of this situation as it exists in Utah, where I have been familiar with tax matters for many years. Just eight years ago the total advalorem taxes which were levied for all purposes in Utah amounted to approximately $8,800,000; while in 1923 the total amounted to $18,000,000. If we were to make a graph showing the public expenditures in Utah since the time that the territory was first organized we would note that there was a continual rise in public expenditures, with the exception of the period from 1888 to 1890 and the period from 1920 to 1921. The graph would show that just prior to 1880 taxes increased at an alarming rate, but that in 1890 and 1891 there was a slight reduction, which was overcome in the years that immediately followed. The situation is duplicated when taxes increased so rapidly in 1919 and 1920 and when reductions were manifest in 1921-1922. But this important

lesson must be emphasized; in each instance, after the total had reached the peak and had subsided for a year or two, an increase started again. It did not take long for the total to pass the peak which was reached in 1888, and while we have not yet reached the peak of 1919 we are well on our way to that goal. So that while there have been times when a reduction was effective in public expenditures, it has not taken long to overcome the effects of such a reduction and to bring about a new peak in public expenditure. Will this be repeated in the future? If your answer is in the affirmative we must then determine whether it is worth while to conduct an investigation of public expenditures with the hope of reducing taxes, when history prompts us to believe that it is impossible to bring about a permanent reduction.

It is not consistent for us to base our conclusion in regard to the trend of public expenditures in the future upon the results of the past alone, because conditions change so frequently that the factors which have been directly responsible for tax increases in the past may be absent in the future and their places may be taken by other influences, the effect of which may be quite different. The past, however, is a guide at least to what we may expect in the future and we can know more definitely in regard to the accuracy of this guide by examining the present conditions and tendencies, for the purpose of determining what effect they will have on the taxes in the future. In discussing this phase of the situation I am inclined to use the situation in my own state as a basis, on account of my first-hand knowledge of the conditions there, and furthermore because the problems which we meet in Utah are duplicated to a certain extent at least in every state in the Union. Out of the total taxes collected in Utah for the year 1923, between fifty and sixty per cent was used for educational purposes and about twenty-five per cent was used for the construction and maintenance of roads. The remainder went to administration and other miscellaneous purposes. In view of this fact we must necessarily assume that if we are to make a material reduction in taxes in Utah we must effect a reduction in the amounts levied for school purposes and for roads, but as I view the situation I can see no possibility of making any reduction in the taxes levied for either of these purposes. On the contrary, if any change is effected it will be an increase. Utah is justly proud of her school system. The taxpayers of the state will not consent to any reduction in its efficiency. The per capita cost of schools in Utah is gradually increasing, due to the increase in pay given to school teachers and the new buildings which are being constructed, so that one may look for an increase in taxes for this purpose rather than for a decrease. When one looks at the road situation in Utah it is quite evident that a reduction in taxes for roads is absolutely out of the

question. On the contrary, the increase in the use of automobiles by the people of Utah and the fact that Utah is rapidly developing into a famous center for tourists, leads one to believe that the maintenance and construction of roads will increase in the future even more rapidly than it has in the past.

Salt Lake City is the center of scenic America. To the north is Yellowstone Park, for which Salt Lake serves as a gateway. To the south there are the wonders of Bryce's Canyon, Little Zion Canyon and the Grand Canyon of the Colorado. As tourists become acquainted with these beauty spots they are rapidly advertised and additional thousands visit them each year. If Utah is to maintain her roads in such a way as to make these scenic attractions available to automoble tourists and to her own citizens, it will mean that millions will have to be spent in the construction and maintenance of the roads leading to these places. This of course is only one feature of the road situation in Utah. In the last few years many millons of dollars have been spent upon concrete highways through the well-settled sections of the state and each year these concrete highways are being extended. Under these circumstances the only effect that we can look for in taxes for road purposes is an increase, and it is difficult to determine just how large this increase will be.

In view of the situation which I have briefly discussed, you may wonder why I am in favor of an investigation of public expenditures, when I have already committed myself to the statement that it is impossible to reduce taxes in Utah. I am in favor of this program for two reasons. In the first place it will have a tendency to prevent unnecessary public expenditures and will act as a brake, in holding back the ever-increasing rate of taxation; and in the second place it will serve to educate the taxpayers—to show them just what they are paying in the way of taxes and what they are receiving. To illustrate the first point, I should like to mention a situation which developed in a community not far from where I live. Through the ambition of the local school board, ably encouraged by the commercial club and the people in general, a new high school building was erected at a cost of $175,000. When it was completed and occupied it was found necessary to abandon two other school buildings which were no longer needed. The windows in these buildings were boarded up and they now stand unused; a distinct loss to the community from a financial standpoint. They are rapidly deteriorating and it appears at present that they will never be used again. The buildings are sound in every respect and while they are old they meet the requirements for good school buildings from every standpoint except one, they are out of style. Now I believe that if an investigation of public expenditures had been made in this community before the new building

was planned and if the people had realized what their present taxes amounted to and had understood that they must of necessity pay for the new school building through an increase in their taxes, they would have hesitated a long time before they ever encouraged such a project. When they faced the situation squarely they would either have continued with the present equipment or else they would have erected a smaller and more modest building which could have been used in connection with the old buildings that they already had. Now I believe that an investigation of public expenditures properly conducted will be of service to the taxpayer in just such instances as the one which I have related. It will serve to educate him to the fact that after all, whether expenditures are met through bond issue or direct taxation, the effect remains the same. The taxpayer must pay the bill.

Another way in which it is possible to secure some reductions in taxation is through the elimination of duplications in services performed by the different departments of federal, state and local government. An investigation of public expenditures can reveal any such duplications, and once they are laid bare, it should not be difficult to secure an adjustment which will provide for the same service being performed without the costly duplication.

Of course the idea uppermost among tax-gatherers is to get the money, but at the same time it is necessary to keep peace with the public, and to have the taxpayers in each community satisfied with the amount of taxes which they are required to pay, as well as the method of assessment and collection. I believe that an investigation of public expenditures will bring about this condition. One reason for the present discontent among taxpayers is due to the fact that stories of extravagance and waste in the expenditure of public funds are quite common. It is the usual thing for one political party to claim that the other party has misused public funds. When a servant of the public embezzles public revenues the fact is broadcasted throughout the length and breadth of the land, so that the taxpayers are surfeited with tales of waste, extravagance and corruption, and many of them are led to believe that the increase in taxes in recent years is due to these causes. As a matter of fact the public business is conducted with a fair degree of efficiency. There is much less extravagance and waste in the conduct of public affairs than one would believe from reading the lurid tales reported by some vociferous politician. And it is an actual fact that a great many of the unnecessary or wasteful expenditures that are made by public officials are forced upon them by an over-enthusiastic chamber of commerce or by public-spirited citizens who do not stop to figure the cost.

An investigation of public expenditures properly conducted will reveal the actual facts to the taxpayer and then he will have an

opportunity to remedy the situation in his own community if he feels that any remedy is needed. When he realizes that the new school building or the other civic improvements must of necessity cost more money, all of which comes from his own pocket, he will not be so likely to urge these additional expenditures upon the public officials. With the actual facts in each case at his disposal he will not be likely to be stampeded by some over-enthusiastic political orator who is long on talk and short on information, but he will be able to base his conduct upon the true facts, without regard to any misleading interpretation that may be placed upon them by unscrupulous politicians. Under these circumstances it is likely that he will make any changes that he sees necessary in the local situation, and if there are none needed he at least will be satisfied with the taxes that he is paying and with the returns that he is getting from such expenditures. This will enable him to vote intelligently upon civic policies which require the expenditure of public money. In other words, the investigation of public expenditure will take the matter out of the hands of politicians and will place it in the keeping of an unbiased committee, whose findings will be unassailable by any political faction or party. This alone will give the data which the committee on investigation prepares, the prestige that could not be secured by any body representing a political party or any office of our government.

You who have considered this problem as carefully as the preliminary committee, will recognize the fact that it is a gigantic undertaking and that it cannot be completed in a short time. With such a job as this on our hands it is necessary to lay a proper foundation, before any attempt is made to carry on the investigation itself. In the first place, it will be necessary for the association to determine to what extent the investigation shall go, then we must ascertain what information is already available in a form that we can use, before we make any plans to gather the information. The Bureau of Census has secured information covering the field of public expenditures from all states of the Union, and it is quite possible that this information can serve as a basis for part of our work. After we have decided upon the scope of the investigation and the information which we must secure, apart from the data already tabulated by the Bureau of Census, or by any other reliable organization, we must next make plans to finance the movement. Before the actual investigation is ever commenced we should have all of the funds which we will need to carry it out, in order that we can go ahead safely, without any fear of being hampered through lack of money.

In looking about for some practical method to carry on this work I have come to the conclusion that we can best attack the problem through the same means that were employed by the asso-

ciation in the formulation of a model tax. As you will remember, the association appointed a committee to formulate the model tax. This committee met together for several days and discussed the preliminaries to the actual work. They then separated, after each one had been assigned a definite task to perform before the committee met again, and at the next meeting of the committee the work which had been done by each member was considered by the committee as a whole and finally, after a series of meetings of this kind a model tax was proposed which has been a distinct achievement of the national tax association and toward which we can all point with pride. One of the important features of the work performed by this committee on the model system of taxation is the fact that the committee met together at a place which was some distance from their places of business or occupation so that they were able to concentrate all of their efforts upon the problem at hand. I can think of no better solution of this matter which we have before us than to have it handled in the same way in which the model tax system was developed. Let us appoint a committee on public expenditures; instruct the committee to meet from time to time as the occasion requires between now and the next conference of our association, and come to the next conference with a program definitely outlined, covering the scope, the method of investigation and the method of financing the investigation, in order that we may discuss and make any necessary recommendations to this committee before the work is actually commenced. Then let us give full authority to this committee to commence the work along the lines which have been approved by the organization.

This method of procedure will take a long while and it may appear to some of you that there will be a waste of time in securing the necessary information, but the task is a gigantic one. If we are to succeed in it, we must make a firm and sure foundation. Furthermore, unless the information which we secure is of definite value and accurate in every detail it will be worse than useless to us. The only way in which we can determine whether information along this line will be of value is through the purpose which it is intended to reveal. This requires careful planning, for we must know definitely what our purposes are, in order that we may select the kind of information which will develop such purposes. Then, too, the data must be tested for its accuracy in every respect and the conclusions must be solid and well founded. We cannot afford to permit any information to be disseminated from this organization unless we know that it meets these requirements in every respect. This will all take time, and try though we may to cut it down we shall find that in the long run the interest of the association will be served to best advantage by a careful, judicious planning of the work before it is ever commenced.

CHAIRMAN LESER: When a few years ago the American Economic Association in joint session with the American Historical Association held their twenty-fifth joint meeting, Dr. Harry Van Dyke remarked that the wedding of these two organizations was most appropriate, because economy had now become largely a matter of history. I think that epitomizes pretty well the thesis discussed here so much at this conference.

It is my pleasure now not to introduce but rather to present to you the opportunity of hearing one of our beloved fellow-members —a man who, I venture to predict, will add a new page to history— Dr. Page.

DR. PAGE: What I have to say is so brief and so informal that I could say it from my seat. I want to say, in the first place, that all that an earnest, able and exceptionally well-informed man could do to stimulate this work that was committed to us last year was done by the president of the association, Mr. Bailey; but the difficulties found by the informal committee, that more or less of its own accord assumed somewhat the functions of a steering committee, were too serious to be overcome. The committee was composed of men who were exceptionally busy. Our secretary, Mr. Holcomb, was deeply engaged in other matters, and it was impossible for him to find additional time, that is, time additional to that which he was spending on the affairs of this association, to devote to the very laborious duties of the committee that had to organize this work.

The same thing was true of Professor Thomas S. Adams, who was another member of the committee, and the result was that the committee could not have meetings frequently enough and long enough really to determine just how this matter ought to be approached.

We did meet in Washington, and we propounded amongst ourselves a number of questions that did seem to us to deserve serious consideration. We agreed that they did deserve consideration, but in what proportion and with what degree of perspective, we could not agree upon. I think that each of us who were present at that meeting agreed with perhaps thirty per cent of what the other members had to propose, but it was not always the same thirty per cent. It became immediately apparent that we should have to devote a much longer time to these discussions than we had at first anticipated, before we could get the work started. Meanwhile inquiries had come from Governor Lowden as to just what the committee thought he ought to do about this thing. He was to compose the so-called Lowden committee that was to make the investigation. It had been suggested at one time that it should be a committee of governors. Somehow the steering committee did not seem to think that a committee composed of governors could be

relied upon to do the amount of work and the kind of work that would be necessary.

Then, who was to select the committee that was to assist Governor Lowden? What were the functions of that committee? What, in other words, was to be done, and how was it to be done?

Not the least among the matters of difficulty was the one of financing the work. It was apparent that a considerable effort would be necessary to assemble the facts and the statistics that would have to be used, and to interpret those facts and statistics would require a great deal of time and a great deal of expert knowledge.

Where was the money to come from to do that? It had been informally suggested at the conference last September at White Sulphur, that this work would be likely to cost maybe one hundred thousand dollars. There was no doubt that if we chose to apply to certain parties we could get large subscriptions for work of that importance, but it was felt that if this money could be raised by a somewhat more popular subscription, in small amounts, that it would do a great deal to excite interest in the work, and to get the results that might be achieved and the recommendations that might be made to a wider circle of people who would be interested. All those matters required serious discussion.

As I have stated, we could not discuss those things, because we could not get together; the men were too busy at the time to meet, and we postponed the matter from day to day until along in the spring it became quite evident that almost any work of this character which would be undertaken at that time would be suspected of having some political color, and we thought that a year of a national election was perhaps not a very timely period for undertaking to do this work in such a way as to present conclusions to the conference at this session, and that after all it would be necessary for us to go back to the conference and find out more definitely what they wanted us to do.

Now, the necessity of this work has been laid before you by our president. The methods of doing the work have yet to be devised, and I know of no better method than the one that he has suggested; that a committee shall be selected from the membership of he National Tax Association who will be so situated that they can give the necessary amount of time to the work, as was the committee on Model Tax System, and that they should discuss all these matters, arrange the scope of the investigation, suggest the means of financing the investigation, and determine just what relationship some external committee, such as the proposed Lowden committee, should have to the work after it had been put under way by the committee that the president suggests.

Important as the matter of public expenditures has become, the

immediate prospect of any great reduction in public expenditures is not as pleasing as we could wish. The charts that were shown here by Mr. Gottlieb the other night indicate that state expenses are relatively small. The great bulk of the money that is now raised by taxation is spent by the Federal Government and by the local governments.

Now, General Lord, in speaking of the possibilities of saving on the part of the Federal Government, pointed out to the Federal officials, who were called to meet at Washington, the difficulties with which they were confronted. Much of the money raised by taxation is already committed to ends that cannot be neglected. A certain amount must be spent upon the Navy; a certain amount upon the Army, and a colossal amount in the service of the public debt.

He said the situation reminded him of an old colored man whose sad experience had come to his knowledge. He owed the keeper of the country store with which he dealt, who had given him credit throughout the year, expecting the colored man to pay what he had incurred, on the sale of his cotton crop. He made a pretty good cotton crop, sold it at a fairly good price, and yet, after that transaction, he still did not make any payment on his debt to the storekeeper. The storekeeper wanted to know why. He says, "Boss, I ain't got no money." He said, "What became of your cotton crop, what you got from that?" The colored man replied, "Boss, the ducks got it." "What do you mean by the ducks got your money?" He says, "The cotton was sold all right, but when it came to settling up, I found I had to take off something for commission, something for freight, and something for all these other things; everybody had to get something, and by the time they got through, the ducks had it all."

In the words of the old gentleman, the ducks are now getting a great deal of it.

Now, there is one duck that preys upon these local revenues that bids fair to grow into a buffalo, and has one of the most colossal appetites I ever saw, and that is the provision that has to be made in the service of these growing debts that are being piled up in the localities. These bond issues that have become so popular in recent years are growing by leaps and bounds, and I do not believe the localities have the slightest conception of the seriousness of the situation, when they are making commitments for future payments that bid fair to do just exactly what the payments of interest in the National Government are now doing; that is to say, eating up more revenue than the total revenue of the National Government. These public debts incurred by the localities, and to a slighter extent by the states, will in the near future require a large revenue to meet the interest and the other items in the service of the debts

that are going to be greater than the whole public revenues, within a comparatively small number of years.

Now, a committee of this kind, and an association of this kind can render a great service to the public, if not by actually reducing present expenses, at least by calling attention to the great dangers that our communities are now incurring, and making the people aware of the extent to which they are mortgaging their future and the future of their children.

I think that the suggestions that the president of the association has already made in regard to what the association ought to do about this thing cannot be improved upon, and I am in hearty and complete accord with all he has said.

Mr. E. P. Doyle: Isn't the basic fault the change in the idea of government? Wasn't it, up to 1895, the idea that it was the duty of people to support the government, and now it is the duty of the government to support the people?

Economy is not popular, and the public official who talks economy and practices economy does not get anywhere near the headlines in the newspapers that the public officer does who has 150 millions for this proposition and more millions for some other proposition.

Dr. Page: That may be one of the causes; I don't know. There are a great many causes of this thing. I think ignorance on the part of the people in regard to the end of the road which they are now traveling may be looked upon as more fundamental than any other cause. The people do not understand the gravity of the situation and the gravity of the practices they have been indulging themselves in, not only since we entered the War, but for the last fifteen years.

Chairman Leser: Those of you who are engaged in the practical administration of tax laws, and also those of you who have occasion to study the statistics of taxation and the work of tax bodies, must have been gratified to know that we do not devote ourselves wholly to questions of principles, but that we have given some attention to the very concrete problem of making our reports useful, more useful and better understood. It must also be gratifying to know that the committee which made a preliminary report at the last conference has not been idle in the interim, but has gone one step further and prepared a second report, which will now be presented to you by Mr. Mark Graves, of the New York Tax Commission.

Mr. Mark Graves (of New York): Mr. Chairman, Ladies and Gentlemen: The subject assigned to me, as you must all appreciate, is a very dry one. It is as dry as the cellar of the house that one of our New York real estate men was exhibiting to a prospective

customer. When they got down to look at the cellar the real estate man called the gentleman's attention to the fact that it was a perfectly dry cellar. The fellow says, "That is all right; I will buy the house; I know a good bootlegger."

The subject being dry, it naturally pleases me to see so many of you who are willing to spend twenty minutes listening to a discussion of the subject.

In that respect I know how the Governor of the State of New Jersey felt. He was invited, or at least went to one of the penal institutions of the state one year, and was called upon to address the convicts. The governor started his speech by saying: "Ladies and gentlemen"—and then he paused and thought that was not just the proper salutation to use; so he made another start and said: "Fellow-citizens"; then he paused again, and had another mental reaction. He did not know just how to address this crowd, so he finally said: "Well, I am glad to see so many of you here."

There was a realization some years ago, very aptly stated by the then president of this conference, that what we need is more facts about taxes. In his address to the convention in Minneapolis, Dr. Adams said in part: "We need more educational work; perhaps as much as anything else, we need more fundamental facts." As an expert he, within the limitations of his time and strength, has endeavored to get at the truth in a disinterested way in this connection. He said: "The thing I feel most is the absence of clear-cut facts."

The other day I was chatting with Mr. Whitney, a member of the association, and he told me of a solicitor that his company had at one time. This solicitor always asked when someone came into his office with a problem: "What are the facts?"

Now, the committee which rendered its first report last year looked over the situation and came to the conclusion, that our tax reports developed by the various tax departments, boards or commissions in the various states, were, first, ununiform; they did not present the facts in the same way, or they did not present the same set of facts. The committee also concluded that they did not develop all of the necessary facts, the facts which were useful at the time or which might bcome useful, because of needed changes in the statutes. We found in many reports that facts, interesting in themselves, were developed at some considerable cost, time and expense, but that they were merely interesting; they were not at all useful.

Therefore, we outlined in our report last year a minimum of information which we believed any tax commission or tax department report should show. Unfortunately, we did not have an opportunity to present and discuss it at the conference, but fortunately we did have it printed, so that all who attended that con-

ference were able to take copies of it away with them. At that time the committee was not at all convinced that we had the best plan, or as good a plan as could be devised, for aggregating the facts concerning our various taxes. Since then we have invited criticism; we have asked for suggestions, and in some particular states we have actually tried to apply, and found that we could apply, the principles enunciated in the report last year.

When you receive, as every person will who attends this conference, a copy of the report of the New York State Tax Commission, you will find that we have incorporated in it virtually every feature contained in our report last year. Night before last we of the New York delegation sat down for two hours with a delegation from another state that had certain questions that they wished to ask. They were interested in that state in perhaps changing or revising or revamping their tax system. Virtually every question which they asked us about our new New York State tax system will be answered in our printed report for 1923, when it is published. It is now in the hands of the printers.

I mention that merely to illustrate: Here is a state studying and asking questions about our tax system, and we find we can answer all of those by the information which we have in our last year's report recommended to be incorporated in the reports of all tax commissions.

Perhaps you ladies and gentlemen anticipated when I took the platform that I should proceed to read our this year's report that is printed. Last night copies of it were placed on the chairs in the assembly room where you held your meeting. I shall not undertake to read it to you today. If you haven't a copy, we can perhaps supply it here. If, when you get home, you find you have lost your copy, you can write to us and we will send you a printed copy. Of course the report will be printed in the proceedings of the conference when they are printed.

What I would like to do, if I might, is to sell the idea to tax commissioners and to those having to do with the compilation of tax reports, the thought that statistics are valuable. Not all of them are, but most of them. I think that if you compile the statistics in the way we are suggesting, you will find them all valuable. If you wish to see a record, a demonstration of the value of statistics and also a demonstration of the high art in statistics, just examine the statistics compiled by the baseball leagues. No business, no institution of government, has developed the statistical art to as high a plane as has the baseball profession.

I sometimes tell this story, and at the outset, before I tell it, I ought to say this: I am not a statistician; I am rather an administrator, but I do believe in statistics, and find them very valuable as an aid in administration. I may have been under the suspicion

of being a statistician. In that regard, I am reminded of a story. A stranger dropped off the train in one of the western towns; he wished to hire a lawyer; he met a chap on the street who looked as though he might have a situs there, and he said: "Are you a resident of this town?" The man responded: "I am." "Have you a criminal lawyer in this town?" "Well," the fellow says, "we have one that we suspect of being a criminal, but we cannot prove it on him."

The value of statistics is illustrated sometimes by another story. A Harvard fellow and a Vassar girl, out of school some ten or fifteen years, met one day, and chatting together, the Harvard chap said: "My class at Harvard recently took a census of the members who had married since leaving college and it was found that each fellow had an average of one and one-half children." The Vassar girl said: "Now, isn't that odd. Our class at Vassar did the same thing recently, and it developed that we had three children per girl. What do you suppose that means?" "Why," the fellow said, "that is easy: simply that the women have more children than the men!"

I will prove to you the value of statistics in another way, and I will take inheritance taxation, because that is one of the subjects which has played a prominent part in this conference. While we have had in New York State an inheritance tax statute since 1885, we have never until this year developed or aggregated any of the information disclosed by the reports or by the papers upon which taxes were assessed. This year we decided we would develop that, because we believed it contained a fund of not only intersting information but useful information. There are one thousand and one facts developed by this data, which our statistician, Mr. Howard, has here with him in pencil form. I shall simply mention a few of them. First, we find that the people who died in 1920 left gross estates consisting of 150 millions of dollars worth of real property and 566 millions of dollars worth of personal property. The ratio, then, of personalty to realty was 21 per cent. Twenty-one per cent of these estates were real property and 79 per cent personal property.

Now, that does not mean, of course, that holdings of people in general run in that ratio, but we analyzed those a bit further down the line, and we found that of those estates, where the net estate was five thousand dollars or under, property was held in this relation; 43 per cent of it was real property and 57 per cent personal property. We have our statistics arranged by grades or sizes of income. I will now jump to the estates of one hundred and two hundred thousand. There we find that real property and personal property stand in this relation: 19 per cent real property and 81 per cent personal property.

Then we jump a few more steps to the class of estates where the net estate was one million or over, and there we find that the people held real property to the amount of 14 per cent and personal property in the amount of 86 per cent.

Our friends from Alabama and Florida, who are opposed to inheritance taxes, one state being on the point of guaranteeing that no inheritance tax will ever be established, might well study the significance of these figures. They indicate that the small fellow, the one with small holdings, the small estate, is paying a large general property tax. The proportion of holdings of realty is high, while in those having over a million it is very low.

If they have no income tax in Florida, they are going to attract some of our millionaires who will bring down to that state great bodies of wealth and pay taxes perhaps on fourteen per cent of it. The only way that we can get taxes on that class of individual is through our income tax and through our inheritance tax. If I were from one of those states I should pause and wonder about that.

Interesting items of information are developed by this aggregation of data which we have compiled. Of the sixteen thousand people who died in our state in 1920, who were subject to the inheritance tax, 8,800 were males and 7,500 females. The estates of males paid $11,200,000 and the estates of females paid $5,200,000.

I shall mention just one other interesting item which this tabulation disclosed. The total tax which we collected in New York on the estates of those people who died in 1920 amounted to $16,400,000. Now, $1,885,000 of that was collected upon the estates of non-residents, leaving $14,551,000 paid upon the estates of residents. Of this $1,800,000 which we collected on the estates of non-residents, $654,000 was collected upon real property and tangible personal property having a situs there. That cuts us down to a figure of $1,231,000, which we collected from the non-residents of the state, because of their intangible personal property.

We have never known until now what this multiple taxation which we have been talking about amounted to. We have not known how important it was to us, whether we did or did not tax non-residents upon this intangible personal property.

Furthermore, this shows that if all the states in the Union had an inheritance tax law like ours, this multiple taxation about which we have been talking would amount in the aggregate to $6,750,000, out of a total collection of eighty to ninety millions.

Now, several states have fairer laws than ours, some of them less fair laws than ours, but if all laws were like ours, that would be the extent of multiple taxation in the United States, as far as inheritance taxes are concerned.

I have mentioned that, gentlemen, by way of trying to prove, as

I should like to, that statistics are valuable; that they are indispensable to us in our work. What we need to have is the facts, and unless we have them we cannot act intelligently, either in an administrative way or in recommending legislation to our superiors throughout our states.

Just one word more and I am through: The report of this committee last year outlined the tables which we thought every tax department report should contain. The report this year, as you will discover when you examine it, outlines the forms upon which that information may be produced or included within the tables of the tax commission.

There are other things which this committee might properly do. We have enumerated them on page two of this year's report. We are not anxious to undertake more work, because, believe me, it is not simple, when you are burdened with other duties, to carry on research work of this character; but if it should be the wish of the conference that we continue along with the enumeration of things which ought to be done, mentioned on page two of the report, I think the other members of the committee will join with me in accepting the work.

There are many more things I should like to say to you, but I have consumed my time. I wish to thank you for the attention which you have given me.

(The complete text of the report is as follows.—Ed.)

STANDARDIZATION OF ANNUAL REPORTS OF STATE TAX DEPARTMENTS

Second Report of Committee of the National Tax Association

Your committee on the standardization of reports of state tax departments and tax officials presented its first report to the sixteenth annual conference held in White Sulphur Springs, West Virginia, in 1923. That represented the best thought of the members of the committee on the subject-matter then covered. The report was received and printed in the proceedings of the conference, with the understanding embodied in an adopted resolution, that copies thereof be transmitted to all tax commissions and officials performing like functions, with the suggestion that they make use of so much of it during the current year as they found they could readily and sensibly adopt, and that they furnish to the committee their written criticisms of the plan and their suggestions of changes to be made. Your committee complied with that resolution and in addition sent copies to leading tax officials of the larger

cities and counties and to well-known authorities in the field of taxation.

We now report that no suggestions of changes of major proportions have been received. At the time, members of the committee were not entirely persuaded that the proposals were the best, or the only ones to be suggested. Now, however, after a year's consideration, and since they have been tested by practical application, we are convinced that they need changing in no essential respects. At least one state has found it practicable to develop nearly all the information called for by the recommended tables.

The first report reprinted in the proceedings of the sixteenth national conference of your association should be read in connection with this report.

That report contained an outline of the tables believed essential to produce the minimum of information to be developed in a tax department report. Such was but one phase of the committee's work. In this report we deal with the second phase, that is, *determining the forms upon which the information needed can best be produced.* One of the most pressing needs is for adequate reliable data relative to our various tax problems. It is generally recognized that but meager information is now at hand. To produce and aggregate the needed facts requires some degree of uniformity in blanks and in the method of compiling statistics. For these reasons, your committee is devoting the major portion of this report to some of the more essential basic forms.

In developing an adequate official tax literature of original sources, in the place of the haphazard and miscellaneous tax literature which our official reports now constitute, the following seems necessary:

(1) The form and content of the essential tables should be determined. This requires that the report forms for the various taxes in the several states shall be as nearly uniform as may be.

(2) A standard assessors' manual, in which is outlined the one best known method for determining the full fair cash market value, i. e., the value for tax purposes, of each kind or class of real property, should be developed. If all assessors in the country were equipped with such an instrument, more uniform valuations would follow and better statistics of our true wealth result.

(3) Another essential desideratum in the process of getting out comparable tables is the adoption by all governmental units of a common fiscal tax and reporting year. It is thought that such year should be the calendar year. Also, there should be one day, as of which the taxable status of all property should be determined.

(4) As the tax department's report is only one of many reports developed yearly by a state, a proper coordination should be worked

out between its report and the reports of the other departments, whose work is in any manner related to that of the tax department.

(5) The central statistical work which a state performs is that of taking the census, which ordinarily is as of a date half way between federal census dates. The New York State census for 1915 cost $500,000. If the information which the state develops relative to its activities is to be properly coordinated, and made use of, such a state census should be the backbone of a state's statistics and the other branches of statistics should fit into such an important body of facts relative to the state. If this view is accepted—and to your committee it seems not debatable—there should be a revision of the conception now held relative to the field of information which a state census should cover. There are certainly one or two facts which should be included in a state census enumeration.

(6) In the plan of properly coordinated official reports there should not be overlooked the important possibilities of such reports as those of the country boards of supervisors and like bodies, which could readily be made to serve as original sources of information to various state departments. This would include the reports of municipal officers of the various incorporated places of the state, which reports should be made to fit into the general plan of official publications containing worthwhile as well as interesting information.

Your committee has neither the time nor the personnel to cover such an extensive field as that outlined. But there is a self-contained and—as it seems to the committee—an immediately available field of great importance within the capacity of the committee, that is, the forms used or prescribed by the various tax commissions and like officials for use in connection with the various taxes and particularly the real estate tax. These forms are:

1. The tax roll (for land and improvements).
2. The recorded sales of real property.
3. The summary of a county's general property valuations.
4. The summary of a county's general property taxes and other revenues.
5. The report to the tax commission of real property exempt from taxation.

If the forms, from which statistics are developed, relative to any taxes are the same, our information will be greatly improved in accuracy and value.

It has seemed wise to emphasize one point in this paper. To scatter recommendations over the whole field of taxation would be less productive of good than to stress the one most important

matter material to standardization. Accordingly, most of what is said centers around the tax roll and related forms. The tax roll is the most important single document in the field of American taxation.

The committee restricts its recommendations relative to the general property tax to real property only. The situation in the various states in regard to the assessment of personal property is such that it seems impossible at this time to develop information which would prove of value for the purpose of comparison and no uniform forms could be devised to meet the conditions which exist, inasmuch as some states practically exempt personalty from the general property tax, others classify it and tax it at flat rates, and still others claim to subject all personalty to the general property tax. The main purpose of the committee must be kept in mind, that is, to develop information from which may be compiled statistics which will accurately reflect similar conditions in all of the states. It is not thought that information concerning personal property assessments would be of real value for this purpose.

The proper assessment of real property involves more problems for more people than any other matter in our plan of taxation, perhaps more than all other matters together. Yearly, the country over, the tax assessors and collectors carry on intensive campaigns to value property and to collect funds for their governments. But the correct valuation of real property is not merely a matter of primary concern to the tax men and the taxpayers, it is fundamental to finding out the second most important fact relative to a country. For if the population is the most important, its wealth is a close second.

It is clear that the description, the valuation and the other pertinent facts relative to land and improvements can be entered upon the roll in a best method and that the data needed for a satisfactory description should be the same in all the states. The question therefore naturally arises: Why can we not have a uniform real estate tax roll for all the states? Why can it not provide for certain minimum information, to which other data can be added by any particular state, to meet any peculiarities inherent in its tax system? Certainly land and improvements in one state possess no characteristics requiring a different roll on account thereof. Having accepted this view, your committee has put together what seems to be such a roll as is demanded by today's difficulties and problems connected with our general property tax, and the related forms necessary to be used in bringing together the required information.

The Tax Roll—Real Property—Form Recommended

1	Description				
	2	3	4	5	6
Name and Address of Owner	Location, street (and number) or road	Side of street or road	Insert in this column the names of the abutting property owners on each of four sides, respectively. For example: N.=Brown; E.=Jones; S.=Smith; W.=Robinson	Acreage or linear dimensions	Character of real property: State whether forest, mining, agricultural, manufacturing, mercantile, public utility or residential
1					
2					
3					
4					
5					

Assessments				Amount and Purpose of General Taxes					
7	8	9	10	11	12	13	14	15	16
Full value of such real property	Value of land exclusive of improvements	Amount of exemption of property partially exempt	Full value of real property less amount of exemptions if any	State tax	County tax	City tax	Town tax	Village tax	School tax

Special Taxes			Particulars of Payment		
17	18	19	20	21	
Other taxes (specified)	Interest, penalties, fees, etc.	Total taxes, interest, penalties, and fees, etc.	Number of receipt	19— Date of Payment	
				Month	Day

Give here the total cost of assessing and collecting the above property taxes .....

The foregoing form has been prepared with the thought in mind that there should be but one tax roll for each town (or county, where the county unit of taxation is in effect) for all taxes, including state, county, city, town, village, school and special district taxes. The committee desires to stress the importance of eliminating overlapping tax functions where they now exist. It seems absurd, for instance, to find one set of assessors preparing a roll for state, county and town purposes, another set preparing a roll for village purposes, and still another set preparing a roll for school purposes, when one roll prepared by one set of assessors would answer all purposes. Likewise, a multiplicity of tax-collecting officials should be avoided.

Description of Property:

It must be recognized that the description of real property for taxation purposes is primarily the work of a surveyor, but where assessors obtain descriptions from deeds which give the correct area, the function of the surveyor has already been performed. However, where deeds have been loosely drawn, an attempt should be made to secure a more accurate description from other sources. The effort of the assessor should be to develop a total acreage figure equal to the acreage determined for the tax district by the United States Geological Survey. This will have the effect of producing a more accurate roll and a fairer distribution of the tax burden. The acreage of all property (including exempt and public utility property) should be stated on the roll, in order that the proper check may be made.

Tax Maps:

Where tax maps are employed the problem of description is largely solved, and may be met on the roll by reference to the section, block and lot number, as shown on the map. However, the character of the property should be stated. The tax map is a sure preventive of the omission of property from the roll, which is one of the great evils, where the tax map has not been adopted.

The general subject of tax maps has been discussed at national and state tax conferences from time to time and much literature pertaining thereto is available. For this reason the committee deems it unnecessary at this time to enter into a detailed discussion of their value. Suffice it to say that the committee endorses all that has been said on the subject and considers a proper tax map to be one of the basic forms for the development of the facts relative to the real property tax. It includes the tax map with its other recommendations.

Character of Property:

In this connection, a word should be said about the column asking for use of the property. It is almost certain that there should in many cases be equalization along the lines of the size or value of the property and also in many cases there should be equalization along the lines of the use of the property.

The following facts have been so frequently observed that they might be classed as laws. The more valuable a property, the less apt is it to come on the market; the less a given class of property comes on the market, the less certainly can its value be determined. The less certain assessors are as to value the more certain are they to be conservative in fixing value. Therefore, the more valuable a property is, the smaller is the percentage of its assessed to its full value. This situation, when existing, requires that property valuations shall be equalized accordingly.

Different properties are used for different purposes and it would seem to be only accidental if the various classes should prove to be assessed at the same percentage of full value. In fact there is much to lead one to believe that some groups or classes of property are assessed at a considerably higher percentage of full value than are properties devoted to other uses. If such is the case, it is clear that valuations should be equalized as between such various uses. If this is attempted, or even if studies are directed along this line, it will be necessary to have the tax roll show the use of the properties listed.

In determining the total consideration for a sale, the amount indicated by the revenue stamps affixed to the deed should be first computed, considering each 50 cents in stamps as representing $500 of consideration, except that the last 50 cents should be considered as representing $250, for the reason that 50 cents in stamps is required to be affixed for each $500 or fraction thereof. To the amount indicated by the revenue stamp should be added the amount of any mortgage assumed by the grantee or subject to which the transfer is made, but the amount of purchase money mortgages should not be included, as stamps are not required to be affixed to cover such amount. The total consideration, thus arrived at, should be compared with the consideration stated in the deed, except in cases where the stated consideration is merely nominal, and in the event of a material discrepancy between the stated consideration and the consideration indicated by the revenue stamps and mortgages, investigation to ascertain the true consideration should be made.

The primary information enabling an assessor or other person to know the value of property consists of (1) actual sales and (2) bid and asked prices. This information has its limitations of

THE RECORDED SALES OF REAL PROPERTY—FORM RECOMMENDED

Recorded sales of real property—Village of .....
Town of ..... County of .....

1 DATE OF SALE			2 RECORDED		3	4	5
Mo.	Day	Year	Book	Page	GRANTOR AND GRANTEE	Location street (and number) or road	Side of street or road

6	7	8	9	10
Acreage or linear dimensions	Character of real property: State whether forest, mining, agricultural, manufacturing, mercantile, public utility, or residential	Number and character of any improvements	State whether sale was in foreclosure or partition, at auction, between relatives, private sale, etc.	Value of personal property, if any, included in sale

CONSIDERATION				ASSESSED VALUE					20
11	12	13	14	15	16	17	18	19	
Stated in deed	Revenue stamps	Mortgage (state whether purchase money, assumed by grantee or transferred subject to)	Total	1921	1922	1923	1924	1925	Remarks

value, because, of the seven or eight principal kinds of realty there are several which are apparently never sold or else are sold at such infrequent intervals that there is a long period in which the value of the property involved cannot be fairly measured by the consideration involved at the time of its last sale. However, the sales data, where applicable, must remain the primary reliance in arriving at fair values for assessment purposes and it appears obvious that the information relative to sales of real property can be accumulated in a uniform way by all the states.

The necessity for the accumulation of this information lies in (1) the use of the data in relation to that percentage and those kinds of properties which are sold, in enabling assessors to know the actual in contra-distinction to the estimated value of such properties, (2) enabling the levying board or official to have information necessary for use in distributing the burden of taxes among the various tax districts, and (3) enabling the state to distribute fairly the burden of the state tax among the subdivisions of the state and to possess a check on the work of the assessors and levying board or official.

With the sales data furnishing the assessors with the actual value of the properties, they have a ratio of market to estimated assessed figures, which they can apply to the properties which are not sold in the current year or years. It is usually assumed that this ratio, in case the sales are numerous, can be safely applied to the unsold properties, in arriving at the full fair market value of the real estate in a given political unit.

The listing of recorded sales is a matter of sufficient importance to require that the list for each tax district be complete, and it is urged that the compiling of the information necessary for its own purposes in a given unit should be in the hands of the same office, and if possible, in the hands of the same individual. The list of recorded sales should be kept up to date, so that it will be possible to take the actual full value as the assessed value and to determine the total value of the tax base in a given taxing unit. In this measuring of assessed values by comparing therewith sales values, it is important to know the percentage of the area and the percentage of the property, meaning the kinds of property in respect of which there is supporting sales data.

Due to the fact that in many jurisdictions so small a percentage of property is sold within a sufficiently recent period as to make the sale figures adequate, in determining values for equalization purposes, it would appear that there should be accumulated, so far as practicable, figures for bid and asked prices which did not lead to a sale. It is possible that there would be four or five times as many such figures as there are sales figures in a given locality, and if so, we could derive therefrom certain minimum and maxi-

THE SUMMARY OF A COUNTY'S GENERAL PROPERTY VALUATIONS—FORM RECOMMENDED

Statement of the aggregate valuations of real and personal property in the several tax districts in the county of .....

1 Cities, Towns and Villages (Show under each town each village therein on a separate line)	2 Acres of land	3 Number of real property taxpayers	4 Assessed value of real property including village property and real estate of corporations	5 Whereof land	6 Whereof improvements
Totals					

Assessed Value of Real Property Distributed Between							14 Percentage of assessed to full value of real property determined by equalization body for equalization of real property assessments
7 Forest	8 Mining	9 Agricultural	10 Manufacturing	11 Mercantile	12 Public utility	13 Residential	

15 Equalized value of real property including village property and real estate of corporations	16 Total assessed value of personal property, excluding bank stock	17 Total equalized value of real property and assessed value of personal property excluding bank stock	18 Total assessed value of stock of national banks	19 Total assessed value of stock of state banks

NOTE—This statement must be returned to the State Tax Department not later than the .....

Average rate of assessment of real property in the county ..... per cent.

mum valuation figures to supplement the sales figures. In the absence of a better system the local officials should fill out this form and file a duplicate with the State Tax Commission, which could have its investigators check the accuracy and completeness of the data, so far as they found such to be necessary. But better yet, the county clerk's office should furnish each year a complete list of recorded sales in the county to the State Tax Commission and a duplicate for the town to the board of assessors in each town. Another alternative which might prove feasible in cities would be to have all deeds presented to the assessors for inspection before recording. The assessors could take off the necessary information and furnish a duplicate thereof to the Tax Commission.

The "Tax Roll" and the "Recorded Sales of Real Property" are forms used by local officials. The next step in developing information relative to the general property tax concerns the reporting of aggregate figures to a central authority. The above form is that which shows for the county the information used by the levying board or official, in equalizing the valuations of the towns, for distributing the county and state taxes to be raised by the county, among the various towns.

This form calls for the number of real property taxpayers in each of the cities, towns and villages. This is a primary fact connected with the real property tax because it enables one to determine the percentage of the population directly affected thereby. In the degree that a given population is not immediately affected by this tax we may expect that population to lack interest in the efficiency displayed in the use of the funds provided for government by this means. There are many other uses for which this information will have a great value, although it is realized, and particularly in the case of cities, that the number of real property taxpayers reported may be maximum rather than actual. This is due, among other reasons, to the fact that some taxpayers owning more than one property have various properties listed under other names. But the fact that the totals will be somewhat larger than the actual number should not operate to prevent the development of the best informaton possible relative to this important body of facts.

This form is closely related to the preceding one, in that the former provides for the information relative to the tax base of the property taxes provided for in this form.

In the case of each separate taxing unit the total cost of raising the general property tax should be recorded and reported with the aim in view of enabling the State Tax Department to know the actual complete cost of securing this revenue. This cost should include both that which is involved in the assessment and that which is involved in the collection of the tax.

THE SUMMARY OF A COUNTY'S GENERAL PROPERTY TAXES AND OTHER REVENUES—FORM RECOMMENDED

Statement of the amount of taxes and tax rates in the several tax districts in the county of .....

1	2	3	4	5	6	7
CITIES, TOWNS AND VILLAGES	Total general property tax	Cost of assessing and collecting general property tax	State tax	County tax	City tax	Village tax

8	9	10	11	12	13	14	15
School district tax	General town tax	Other town taxes, i. e., the special district taxes: Fire, garbage, light, sewer, sidewalk and water district taxes, etc.	Number of special districts	All other revenue receipts	Bonded indebtedness *	Sinking funds *	Temporary indebtedness *

NOTE—This statement must be returned to the State Tax Department not later than the ....

Bonded indebtedness of county $.....

New York has a tax for stenographers and court expenses and an armory tax. So long as any state has such peculiar taxes they must be provided for on this form by separate columns although no other states have corresponding taxes.

* Three additional columns for school districts should be provided where applicable.

The localities in various states receive revenues from the state under various provisions of law. For example, the localities in New York are receiving funds from the state or from the county collections, under seven different grants or distributions. Each should have a separate column provided. In New York the form would include columns for

1. The receipts from motor vehicles which go to the localities.
2. The portion of the mortgage tax that goes to the localities.
3. Receipts from bank stock tax and moneyed capital tax.
4. The portion of the business corporation tax that goes to the localities.
5. The portion of the personal income tax that goes to the localities.
6. State aid for roads.
7. State aid for schools.

The column for all other revenue receipts is not primarily a tax matter, although it is a revenue matter and should provide for receipts from other sources inclusive of licenses, fees, water rents and any revenues from municipal operation of public utilities.

This form should bring together the facts relative to both the tax burden and the revenue resources of the various localities.

Public debt is so important a matter from several viewpoints that this form should include what is pertinent relative to the debt of the various localities. Accordingly columns are included for the bonded indebtedness, temporary indebtedness and sinking funds.

THE ASSESSOR'S REPORT TO THE TAX COMMISSION OF REAL PROPERTY EXEMPT FROM TAXATION—FORM RECOMMENDED

County of ..... Town of .....

Name of individual, corporation or association.	Description.	For what purpose property is used.	Amount of exemption.

For each county or other unit the information should be listed alphabetically by towns and by other minor taxing jurisdictions.

Property is exempted among the various states either (1) because of its ownership and (or) (2) because of its use. Accordingly the ownership of the property exempted should be definitely indicated, so that in summarizing, the exempt property of the various classes of taxing jurisdictions can be aggregated. Then ownership by corporations, other than municipal corporations, should be separately indicated and also the character of the cor-

poration. Finally all of the property of individuals should be indicated, with the name and address of such individuals.

After the ownership and description of the property has been adequately entered, another column should show for what purpose the property is used, and this statement should be sufficiently complete so that each property may be classified under the various respective clauses of the tax law, which provide for the exemption of real estate.

The valuation of exempted property possesses a special difficulty of its own. It really makes no difference, as the assessors see it, at what value exempted property is listed, for the reason that whatever may be the amount at which it is valued, there is no tax involved. Furthermore, except at the time of original acquisition, there will never be any sales data available applicable to any of the individual properties. In addition a very large percentage of the aggregate value consists of properties possessing great individual peculiarities. It is believed that the value of exempted property is fairly established by taking the cost of reproduction and making proper allowances for depreciation. Perhaps it is not out of place here to suggest that inasmuch as the local assessors pay so little attention thereto, the State Tax Commission might employ one of its force to go from locality to locality and at least determine values for the larger exempted properties, based upon some uniform method. As in no case would any distribution of moneys be affected by the values arrived at thereby, there should be no disposition in any quarter not to adopt the values thus established.

Although the committee is reluctant at this time to wander from the field of the general property tax in its recommendations, nevertheless, in view of the prominent position given the inheritance tax on the program of this conference, it is believed that it would be appropriate to make some suggestions relative to the transfer tax form. In spite of the fact that the various laws applicable to the inheritance tax are so diverse, yet the important facts relative to each estate may be shown in a summary which it is recommended should be the same for each of the states and should constitute the first page of the individual report.

Transfer Tax Form

There are twenty-eight important data which it is believed are applicable to every state, no matter what may be the character of its transfer tax legislation. These data are as follows:

(1) Name of decedent (2) Sex
(3) Date of birth (4) Date of death
(5) Legal residence: Country ..... State .....
County ..... City or village ..... Town
..... Street and number .....
(6) Did decedent leave a will?
(7) Total gross value of estate, without deduction of debts $
(8) Whereof real estate, without deduction of encumbrances $
(8a) Assessed value of such real estate under the general property tax $
(9) Net real estate $
(10) Bonds $
(11) Stocks $
(12) Mortgages and notes $
(13) Other property $
(14) Debts, other than on real estate $
(15) Expenses of administration $
(16) Net estate, after deduction of debts and expenses of administration $
(17) Whereof transferred to residents of this state $
(18) Whereof transferred to residents of other states of the United States $
(19) Whereof transferred to non-residents of the United States $
(20) Amount of item (16) transferred to direct line relations, such as grandparents, parents, descendants, also including spouse of decedent $
(21) Amount of item (16) transferred to other relatives $
(22) Amount of item (16) transferred to other individuals $
(23) Amount of item (16) transferred to institutions and corporations $
(24) Amount of item (16) (and included in items 20-22) that is exempt from the tax $
(25) Amount of item (16) (and included in item 23) that is exempt from the tax $
(26) Number of personal heirs to decedent's estate $

(27) Amount of tax $

The problems connected with the transfer tax are such that the various states should be developing far more information relative thereto than they are now. We should know to how great an

extent the states are taxing the estates of non-resident decedents. We should know the extent the states are taxing bequests to non-resident heirs. The taxation by one jurisdiction of residents of another will long remain a decided problem and we should have a much clearer conception than at present of the extent of that problem. Furthermore, we have only hazy ideas of the degree to which people of wealth are able to escape taxation by having possession of intangible instead of taxable tangible property. We should know in what degree, as estates increase in size, the percentage thereof in real estate decreases. Our only source of information is the large number of returns that are filled out every year relative to decedents' estates.

There are few questions more important than whether we have an increasing or decreasing concentration of wealth. Is it a fact or not that a bigger and bigger percentage of our total wealth is being owned by a smaller and smaller percentage of our population, and if so, what significance has this fact in relation to our recommendations as to our future tax systems.

If the various states that have the transfer tax would only develop this information annually we should have ample information available to answer a host of such questions. If these states would adopt the recommended summary page here included as the first page of their inheritance or transfer tax form, many such questions, than which there are scarcely any more important, could be answered at a trifling expense.

Conclusion—Summary

The adoption of the recommended forms would have among others the following important results:

1. Segregation of the real property tax base and taxes between rural and urban.
2. Segregation of the tax facts relative to the home.
3. Segregation of the tax facts relative to the farm.
4. Segregation of the tax facts relative to forest property and several other important classes of property.
5. Complete information as to the real property tax base, the revenues and the indebtedness of each taxing unit in the state.
6. A mass of information relative to the special districts, i. e., the unincorporated villages.
7. The true value of the real property of the state will be much better known.
8. And especially the situation in one state can be readily compared with that in all the other states.

There should be a constant and conscious effort on the part of all the states to improve our knowledge of the field over which we

tax men have jurisdiction. When modifications in our present forms are adopted, why can they not be in line with what other states are following? When a state makes an overhauling of its tax system, why cannot it incorporate therein the use of the standard forms?

We desire to emphasize the fact that the proposed forms are set before you, not as final, but as the best point of departure we could devise for your consideration and criticism. When they have received that and been modified accordingly they may then be made as final recommendations. Along with such important work as approving or disapproving new or old systems of taxation, working out model systems of taxation, or advocating the restriction of certain kinds of taxation to the use of certain jurisdictions, let us not overlook such lowly subjects as those connected with the administration of what we have. And, improbable as it may at first seem, there is no plow that will keep its nose in the ground better and turn up more real tax soil than that which is set to get adopted such neglected matters as uniform forms and uniform tables. Let this association give a part of its consideration to the many matters of trivial detail as well as to those of grand importance. Let it work out and recommend the best way of handling those matters which are already within the discretion of our tax commissions, even if those matters are entirely without glamor, as well as recommend matters involving new legislation, constitutional changes, and the tax education of the whole population.

MARK GRAVES, *Chairman*,
State Tax Commissioner, New York

R. W. RIORDAN,
Chairman, Louisiana Tax Commission

B. F. BURTLESS,
Secretary, Michigan Board of State Tax Commissioners

FLETCHER HALE,
Secretary, New Hampshire Tax Commission

PAUL N. REYNOLDS,
Statistician, Wisconsin Tax Commission

W. I. KING,
National Bureau of Economic Research, New York City

DON C. SOWERS,
University of Colorado

HARLEY L. LUTZ,[1]
Leland Stanford Jr. University

[1] Professor Lutz was unable to participate in the preparation of this report, through absence.

CHAIRMAN LESER: I think the late John K. Cowen, who was a great lawyer, congressman, and once president of the Baltimore & Ohio Railroad Company, must have had in mind the importance of statistics when he uttered this sentiment: There is nothing more potent than a definite fact.

I think that if our friend Mr. Graves keeps on at his present pace, giving us these interesting figures, we may sometime learn how many blue-eyed women paid taxes in the year 1917.

When he referred to the governor who made the speech to the prison convicts it recalled to my mind the story of the foundation of a Shakespeare club in a small town. The president of the club was asked, "How are you getting on?" "Oh," he said, "we are doing wonderfully well; we have already been able to purchase a complete set of Laura Jean Libby's novels out of the fines for non-attendance."

Mr. Graves told us that there is nothing more wonderful than the statistics of the baseball clubs, and yet I venture to say he cannot tell us who is going to win the game today, and he cannot tell you whether they will have the world series in Washington.

MR. PHILIP ZOERCHER: They will have that in New York.

CHAIRMAN LESER: Time will tell. Now, before I present the final speaker of today, I am asked by Mr. Bailey to say that if time permits, the committee on resolutions will make its report this evening, and it will be open then for discussion.

MR. BRENNAN: May I make a point about the report that has just been read? I wonder if it would be any advantage, and I mention this specially about tax commissions, if the committee would make a sort of a manual. It occurs to me, in looking over the report, that it is exemplary in reference to the tables which may be included in the commission reports. What I have in mind is that there may be some confusion or some difficulty in being able to get together these statistics by states, unless the forms be outlined from the local unit to the state, that is, taking it up step by step, so that there will be no confusion and the states will be uniform. That is, someone under Mr. Graves' direction might make out the necessary list of reports from the local unit to the county and to the state, so that each one of those will carry the information to the tax commission or the state reporting board in such a way that there will be no confusion in getting together the statistics. If that does not seem to be too much of a burden on the committee, I should like to recommend that that have consideration.

CHAIRMAN LESER: I am perfectly willing that the committee shall resume any burden put upon them.

MR. BLODGETT: I am interested very much in this report on the work that this committee is doing. One of the problems with which I am confronted now is to shape a new report for my state, and I hesitate to do it until I receive the full benefit of the labor of this committee. I have already been helped in arriving at conclusions, and if it is in order now, I would move that that committee be requested to continue with its labors along this line.

CHAIRMAN LESER: That is a question that would have to come before the business of the association. We are now in the conference. The committees are appointed by the association.

The last paper will be read by a gentleman who has given years of study and work to administrative and other tax questions. He has been a state senator — perhaps he still is — and he has been chairman, I think, of the Senate Finance Committee, and also in capacity as attorney for the state in tax matters, and he has acquired a very wide experience. He comes from a state where I understand there is a statute which makes it a punishable offense to mispronounce the name of the state. Why they forbid you from calling it Arkansas, I don't know, unless it is because Kansas is so similar, and you ought not to use the word "Ar". Without any more preliminaries, I call upon Mr. Vaughan to read his paper.

MR. GEORGE VAUGHAN (of Arkansas): Mr. Chairman, Ladies and Gentlemen: I want to be fair and considerate, and in order to forestall the uneasiness at this state of the afternoon's proceedings, I am going to liken myself to the Arkansas darkey. The sheriff of one of the southwestern counties was proceeding to Little Rock, to the penitentiary, with a prisoner. At one of the stations the sheriff of an adjoining county got on also with a colored prisoner. The sheriffs got into a confab, and presently the prisoners got to exchanging courtesies. One of them asked: "Where are you going?" He says, "You know where I am going. I am going to the pen." "What foh?" He said, "I stole a white man's saddle." "How long you goin' foh?" "One year." The first prisoner said, "Where are you goin'?" He says, "You know whar I goin'; I goin' too." "What's you been doin'?" He says, "I busted mah wife's head open with an axe." He said, "How long you goin' foh?" "From now on."

While there has been a limit on the speeches heretofore, I understand that I have the liberty to take from now on, which I will proceed to do, if not prevented by this good-natured and athletic chap.

CHAIRMAN LESER: You are not under an indeterminate sentence.

MR. VAUGHAN: The subject I have chosen is "The Increasing Importance of Special Taxes."

THE INCREASING IMPORTANCE OF SPECIAL TAXES

GEORGE VAUGHAN
Special Counsel in Tax Matters for State of Arkansas

The most comprehensive and authentic source of recent statistics upon taxation is the forthcoming decennial report of the federal census bureau, entitled "Wealth, Debt and Taxation, 1922." Preliminary releases of salient features of this report have already been published and have furnished the inspiration for this paper.

In the task of compiling material for the recent survey, the department of commerce, in its "instructions to clerks and special agents," followed the classification and terminology employed in the previous government reports in the same field.

Revenue receipts considered with regard to their source were segregated into two generally recognized grand divisions, viz: "general property taxes" and "special taxes".

Special vs. General Taxes

The general property tax was defined as "the common designation of the direct tax upon real property, and upon other property, when it is apportioned and levied by substantially the methods employed in apportioning and levying taxes upon privately owned real property."

The term "special taxes" in the report referred to was given a limited application, being defined as including "special property taxes," also "other special taxes, such as inheritance taxes, income taxes, mortgage registry taxes and taxes on the organization of companies."

"Special property taxes" were further defined as "direct taxes assessed, levied and collected by methods not generally applied to privately owned property." They include (1) all taxes upon the property of corporations, based upon the amount of corporate stock, corporate indebtedness, or otherwise than upon the valuation of all the corporate property; (2) taxes upon savings banks, levied according to deposits; (3) taxes upon life insurance companies according to the valuations of their policies; and (4) all specific taxes upon property, as acreage taxes on land, head taxes on live stock, tonnage taxes on vessels, and taxes upon grain at a specified amount per bushel.

In the group "special taxes" the department of commerce also included, as before stated, inheritance taxes, income taxes, registration taxes on mortgages, privilege taxes on incorporation of companies, and "all taxes of a similar nature not otherwise classified." Under this heading there might logically have been grouped the prolific horde of privilege or business taxes, such as taxes on

franchises, gasoline or consumption taxes and taxes on receipts from production or severance taxes.

But the census report groups separately "poll taxes" and "business taxes," the latter being defined as taxes "upon business and business activities exacted from persons, natural or corporate, (1) in proportion to the volume of their business, (2) by reason of the business in which they are engaged, or (3) by reason of some activity which constitutes a part of their business."

Additional major sources of revenue are combined under the head "non-business and license taxes," and described as "taxes, other than upon businesses, that are exacted primarily for the purpose of regulation and are collected in connection with the issue of so-called licenses or permits," with reference to measurable or assumed benefits conferred upon the licensees. Representative of this class are dog licenses, marriage licenses, building permits, motor vehicle licenses, etc., not to suggest, let us hope, a necessarily progressive series or a natural sequence, in which these ultra-modern "satisfactions" are normally demanded—dogs, wedding-bells, bungalows and limousines.

The final classification of the census bureau is "special assessments" and "special charges for outlay," the former being described as "compulsory contributions levied under the taxing or police power, to defray the costs of special public improvements or public services undertaken primarily in the interest of the public."

It is explained that special assessments differ from general property taxes in that they are apportioned according to assumed benefits to the property specially affected by the improvement, or assumed benefits to individuals or corporations by reason of the special service performed.

In this paper, however, the terminology of the census bureau will not be followed to its ultimate refinements; but the term "special taxes" is used herein in a broader sense, and as comprehending all levies other than those imposed *ad valorem,* on property in general. It will, for the purpose of the comparative analysis proposed by this discussion, explicitly include taxes for local improvements, which confessedly are technically "special *assessments,*" and not *taxes* at all.

General Taxes Found Inadequate

The general property tax originated and found its most suitable application in an agricultural stage of economic growth, when the mass of property was tangible and but slightly differentiated. Until within the last fifty years the general property tax was nearly everywhere preeminently the source of all public funds. But beginning about the middle of the nineteenth century, with

the impetus given to industrial development by the adoption of the corporate form of business organization, a natural quest arose for the most effective machine to reach this new kind of property, which to such a marked degree was intangible and invisible.

Special taxes had already been devised for banking and insurance companies, the earliest development being in New Jersey in 1910, with a law requiring the president of specified banks to pay into the state treasury one-half of one per cent on the paid-up capital stock.

The Humble Poll Tax

The obnoxious poll tax centuries ago had been the cause of Wat Tyler's Rebellion, and since 1698 has been unknown on British soil; yet we find it retained as a persistent though inconspicuous revenue feature in forty-three of the American states. There has been a distinct trend, however, to allocate or identify it with the suffrage right, so that in point of practice the $1 poll tax has come to be regarded by many as the price of the sovereign right to vote!

Taxes Based on Gross Receipts

In 1862, Iowa adopted a tax on gross receipts of railroads; and the New York Corporation Tax Law of 1880 was a further departure from the old inflexible system. The New Jersey act of 1830 imposed a tax based upon the number of passengers and tonnage of freight transported, which was changed in 1849 to a tax at a fixed percentage of the cost of all roads having a net income of six per cent or more. The United States Supreme Court sustained the Minnesota tax on gross receipts of foreign express companies.[1]

A conspicuous example of a special tax is that of 7% of its gross income imposed on the Illinois Central Railroad, by the Act of 1851. Under this law, the company pays semi-annually to the State of Illinois, in lieu of property taxes, an amount ranging from $1,000,000 to $1,500,000 a year.

In Pennsylvania the special tax on capital stock yielded, all told, in 1909 nearly $10,000,000, probably then the most productive single tax levied in any of the states, but surpassed by its 1922 performance of $20,493,882.

The Ultra Modern Gasoline Tax

The tax of four cents per gallon on gasoline, together with the schedule of license fees imposed in Arkansas by the Harrelson Highway Act,[2] has yielded during the first year of its operation

[1] *State* v. *U. S. Express Co.*, 114 Minn. 346; 131 N. W. 489; aff'd in 223 U. S. 335.

[2] Approved Oct. 10, 1923; Special Acts, 1923, p. 11.

nearly $5,000,000, or a sum in excess of the entire regular *ad valorem* levy for all state purposes, at 8.7 mills. And the new law imposing a tax on cigarettes and cigars [3] stands to bring to Arkansas around $150,000 a month—a figure astounding indeed to one who was never initiated into the delights of the aromatic weed.

Mortgage Registration Tax

The New York mortgage tax of 1906 levied a recording tax upon mortgages at a low rate (now 50c. for each $100 of the principal debt), and provided for the exemption of secured debts, after the initial payment of the mortgage tax. The New York scheme has been copied with success in several other states, including Kentucky, Alabama,[4] Minnesota [5] and Oklahoma,[6] but was declared unconstitutional in Kansas.[7]

In Maryland a low flat rate is levied on the value of certain securities which, under the regular rate applicable to property in general, had gone into hiding and escaped the assessor. In 1896 only $6,000,000 of such securities were reflected on the tax books. Under the new law, with a fixed rate of 4½ mills on this class of property, the assessed valuation began steadily to increase, until in 1919 it amounted to more than $208,000,000.

Newer Forms of Special Taxes

The federal excise tax, a time-honored resort, but which leaped into unparalleled importance as an incident to the World War, showed a total yield of $115,546,248 upon motor vehicles alone for the year 1921. To enumerate the other familiar articles upon which the "miscellaneous tax" has been laid by the Federal Government with resistless crescendo, would unduly burden this discussion and arouse reflections of an exceedingly unpleasant cast.

Inheritance Taxes

The most universal example of special taxes consists of the inheritance tax laws now in force in forty-six states and the Federal Government, not to mention their astonishing expansion abroad. In 1913 the total yield from this tax in all the states was $26,000,000, or less than one-fifth the sum Great Britain raised from death duties in that ominous year from whence the luckless world plunged into the abyss of cataclysmic war. The decade just ended

[3] Act No. 4, Special Session of 1924, approved June 30, 1924.

[4] *State* v. *Ala. Fuel & Iron Co.*, 188 Ala. 487; 66 So. 169.

[5] *Orr* v. *Sutton*, 119 Minn. 193; 137 N. W. 973.

[6] *Trustees* v. *Hooton*, 53 Okla. 530; 157 Pac. 293.

[7] *Wheeler* v. *Weightman*, 96 Kans. 50; 149 Pac. 977.

recorded a pyramidal increase in America, so that the latest annual yield of inheritance taxes — $210,000,000 — equals eight times the earlier stupendous total of $26,000,000.

The states and the Federal Government are verily in unseemly contest over this disputed source of revenue; and Alabama and Florida are said to be the only states which have steadfastly refrained from leaping into this glittering band-wagon headed towards the side-show of "easy money".

The rapid increase in the yield of inheritance taxes in the jurisdiction in which this meeting is held (Missouri), and in several neighboring states, in New York and the federal estate tax (which began in 1917), is shown by the following table:

INHERITANCE TAXES

	1903	*1913*	*1922*
Arkansas	$ 302	$ 23,665	$ 308,492
California	290,447	1,586,875	6,344,644
Illinois	503,816	1,612,818	3,367,041
Iowa	147,332	280,733	689,486
Missouri	229,854	479,517	1,374,883
New York	3,303,555	12,153,189	15,431,481
Pennsylvania	1,300,834	2,038,738	11,332,935
Federal estate tax			139,418,846
Total federal and all states	7,038,684	26,470,964	207,546,905

INCOME TAXES

The income tax law, while a later development as a state device, bids fair to outstrip the inheritance tax in point of yield. A few examples suffice to show the importance of this source for the latest year for which returns are available:

Arkansas	$250,000
Connecticut	775,000
Delaware	289,000
Massachusetts	12,586,000
Mississippi	38,000
Missouri	2,865,000
Montana	113,000
New York	14,900,000
North Carolina	3,976,000
South Carolina	1,041,000
Wisconsin	4,178,000

MOTOR VEHICLE TAXES

The phenomenal increase in motor vehicle taxes is vividly shown in the following data, prepared by the National Industrial Conference Board:

	1913	1923
Indiana	$ 92,386	$5,215,923
Iowa	717,229	7,891,366
Illinois	482,866	9,441,775
Michigan	185,392	9,572,857
Minnesota	38,834	7,215,121
Ohio	396,504	9,981,434
Wisconsin	187,376	4,791,158

A recent article in the Chicago *Journal of Commerce* treats of the increase in gasoline consumption in twenty states, having either a gasoline tax law or a gasoline inspection law. The total for the six months ending June 30, 1924, of 946,110,715 gallons compares with 779,449,667 gallons during the corresponding period of 1923, or an increase of 21.4%, while the increase in the single month of June, 1924, over the preceding month of May is 9.3%.

The number of states that do not levy some form of gasoline tax is small, including, as of August 1, Missouri, her four neighbors, Illinois, Iowa, Kansas and Nebraska, and nine others. In Michigan, Iowa and Wisconsin bills passed to impose such taxes have been vetoed by the governor, through the activities of motorists who claimed that they were already excessively burdened, and that the additional taxes on gasoline were not needed to build roads, since this expense is adequately cared for by license fees.

The principle underlying the gasoline tax as a tax upon the privilege of using the commodity as a fuel in motors on the highways of a state, was, so far as I am informed, first ruled in Arkansas in 1922 [8] and the principle has recently been upheld in the highest court of the land.[9]

Severance or Gross Production Taxes

The severance or gross production tax is a development of the past decade,[10] and comparisons with 1913 cannot of course be

[8] *Standard Oil Co.* v. *Brodie,* 153 Ark. 114; 239 S. W. 753.

[9] *Pierce Oil Corpn.* v. *Hopkins,* 282 Fed. 253; aff'd in 264 U. S. 137.

[10] Leading cases upholding this form of special tax include:
Republic Iron & Steel Co. v. *State,* 204 Ala. 469; 86 So. 65.
Floyd et al. v. *Miller Lumber Co.,* 160 Ark. 17; 254 S. W. 450.
Ark. R. R. Commission v. *Stout Lumber Co.,* 161 Ark. 164; 255 S. W. 912.
Oliver Iron Mining Co. v. *Lord et al.,* 262 U. S. 172.
Re Wolverine Oil Co., 53 Okla. 24; 154 Pac. 362.
Heisler v. *Thos. Colliery Co.,* 274 Pa. 448; 118 Atl. 394; aff'd 260 U. S. 245.
Producers Oil Co. v. *Stephens,* 44 Tex. Civ. Ap. 327; 99 S. W. 157.
Texas Co. v. *Stephens,* 100 Tex. 628; 103 S. W. 481.
Southwestern Oil Co. v. *State,* 100 Tex. 647; 103 S. W. 489.
Gulf Ref. Co. of La. v. *McFarland,* 154 La. 251. 97 So. 433.
Ark. Nat. Gas Co. v. *McFarland,* 154 La. 266; 97 So. 438.

made. The fact, however, sticks out that a total yield of $30,000,000 has been found from a brand-new fountain head—further evidence of the common trend. Round figures for the latest fiscal year include:

Alabama	$1,000,000
Arkansas	1,000,000
Louisiana	2,500,000
Minnesota	6,000,000
Oklahoma	8,000,000
Pennsylvania	8,000,000
Texas	5,000,000
West Virginia	3,000,000

Tax on Insurance Companies

The special tax paid by insurance companies is based in most states upon a percentage of gross receipts on premiums collected within the state; and the following comparisons reflect the significant growth:

Tax on Insurance Companies

	1903	*1913*	*1922*
Arkansas	$50,000	$220,000	$440,000
Michigan	374,299	616,000	1,685,689
Missouri	164,825	624,578	1,547,518
Minnesota	284,573	443,235	1,113,216
Iowa	237,742	390,549	1,096,085
New York	1,166,528	2,104,743	5,052,020
Illinois	311,380	519,869	3,530,121
Wisconsin	460,810	759,556	1,261,533
All states	6,475,540	17,554,971	

Finally, as a graphic showing of the steady increase in the utilization of special taxes for state as distinguished from local requirements, the following table is gleaned from the census advance report on "Financial Statistics of States," at page 20:

Percentage of total revenue receipts obtained for state purposes from—

	General Property	*All Other Sources*
1915	40.6	59.4
1916	37.7	62.3
1917	34.9	65.1
1918	35.6	64.4
1919	35.1	64.9

The showing is all the more remarkable because of the retarding influence of the enormous revenue loss due to the abrupt abolition of liquor licenses, since the adoption of the 18th amendment to the Federal Constitution.

Special Assessments

It is impossible in the limits of this paper to adequately treat of that class of special taxes which yields the largest volume of revenue, viz: collections of "benefit assessments" for local improvements.

Under this head is the enormous revenue supporting the bulk of the rapidly expanding volume of "municipal securities" in recent years so favored through the exemption from the federal income tax.

According to a leading text writer,[11] "The state therefore has the general power not only to determine that public improvements shall be made, whenever it deems them essential to the health and prosperity of the community, but also to determine to what extent the cost of such public improvements shall be paid by the public at large and what part shall be paid by the property specially benefited thereby."[12]

These bonds are the direct obligations of special taxing districts created for the purpose of financing local improvements such as sewers, streets, highways, parks, levees, and for the reclaiming of arid areas, through irrigation projects.

The benefit principle is not confined to the financing of permanent improvements, but applies to services as well. For example, Toledo's street-lighting bill for 1923 was $218,730, of which the specially benefited property owners paid $134,658, and the city at large only $84,072.

In the domain of special assessments many conspicuous instances of public improvements loom upon the economic horizon, which could not have been realized, but for this convenient device. A few typical examples may serve to illustrate.

Flood Prevention by Special Taxes

The great flood in the Miami Valley of Ohio in 1913 laid waste what had been a most prosperous community. Fertile lands were ruined by the overflow, and populous towns and cities were all but destroyed. As a result of the appalling damage, attention was directed to a means of preventing a recurrence of the great disaster.

The Conservancy Act of Ohio was approved February 17, 1914,

[11] *Judson on Taxation,* Sec. 395.

[12] The principle of "betterments" as a basis for special taxation, usually called special or local assessments, is supported by an array of judicial precedent, including:

Norwood v. *Baker,* 172 U. S. 269.

French v. *Barber Asphalt Paving Co.,* 181 U. S. 324.

Myles Salt Co. v. *Iberia & St. M. Dr. Dist.,* 239 U. S. 478.

Re Madera Irrig. Dist. Bonds, 92 Cal. 296; 28 Pac. 272.

and construction of extensive flood control works in the Miami district was financed by means of special assessment bonds issued under the authority of that act.[18]

The *Engineering-News Record* for November 16, 1922, in describing the method of appraisal of the flood protection benefits and damages, emphasized two conditions, viz: (1) the total benefit must warrant the expenditures, and (2) equitable distribution must be accomplished.

The appraisal work was an undertaking of great magnitude. About 77,000 pieces of property had to be dealt with, distributed along 110 miles of river valley. In about one-fifth of the cases damages were involved; that is, property must needs be taken, in whole or in part, for the construction of flood protection works. The other four-fifths of the pieces were affected by benefits only. Whether damage or benefit, the amount had to be determined separately for each parcel. This was accomplished by compiling a complete outlay of engineering and property data by means of field surveys, and the determination of flood outlines, real estate, maps, etc.

It was held that the elimination of the flood risk would benefit cities and counties as well as the individual pieces of property. Consequently, benefit appraisements were required for cities and counties as units. In determining the benefit to counties, for example, it was found that much county property had been submerged and temporarily put out of use during the flood. The values with and without protection of this property were estimated and the difference taken as the measure of benefits.

When a flood paralyzes industry, as it did in the Miami Valley, it affects every human being living in the community and impairs the value of every piece of property within its boundaries. Thus, the protection project safeguards the assets of the city and assures its future growth and prosperity. As a direct result, traceable to the 1913 flood, there were numerous cases of pauperism, sickness and insanity, and the elimination for the future of such evils as these undoubtedly constitutes a direct and special benefit to the community.

Adaptation to Bridges and Highways

The New York State Bridge and Tunnel Commission is the authority under which there is now being constructed under the Hudson river a vehicular tunnel, at an estimated cost of $14,335,000.

[18] The district was established June 28, 1915. The law was upheld in *County of Miami* v. *City of Dayton*, 92 Ohio State 215; 110 N. E. 726; and again sustained by the U. S. Dist. Court, in *Orr* v. *Allen et al.*, 245 Fed. 486; aff'd, 248 U. S. 35.

From the financial statement of experts, the cost of this tunnel will be amortized in eleven years and at the end of twenty years there will be an accrued surplus to each state of $33,635,000, in addition to securing the tunnel without cost to the people.

The improvement will pay for itself through the tolls to be levied upon traffic, this plan amounting in the long run to a "special tax," since financing by means of tolls is but another method of paying for public improvements.

Financing of Irrigation and Drainage via Special Taxes

The irrigation districts of the West constitute valuable public facilities financed under the plan of special improvement taxes.

In the California procedure, typical of the system throughout the country, organization is perfected by the filing with the board of supervisors of the particular county of a petition of land-holders within the boundaries of the proposed district. Thereupon an election is held to determine whether the district shall be created and for the election of directors.

Provisions for the issuance of bonds usually appear, and in most cases bonds can only be issued upon an affirmative vote of the electors within the district.

A remarkable case of a special improvement on an ambitious scale is that of the Moffat tunnel, penetrating James' Peak in Colorado. The Moffat Tunnel Improvement District was created under an Act of the Special Session of the General Assembly called by Governor Shoup in 1922, which also enacted a flood control law, following the precedent of the Ohio Conservancy Act.

Says Mr. Erskine R. Myer, attorney for the Moffat Tunnel Commission:

> "The general principles underlying the Moffat law are simple. The legislature of any state has what is known in legal parlance plenary power. In other words, the legislature may do any act which the people of the state may do, if that act is not prohibited by the constitution. Therefore, the legislature had the right and exercised it, in the passage of this bill, to form a special improvement or tax district, for the purpose of constructing a public improvement, to-wit: the Moffat Tunnel.
>
> "It was called 'an avenue of communication,' and the purposes to which it could be put were railroad uses, transportation of water, transportation of vehicles, for the transmission of power, and for telephone and telegraphic messages."

The legality of the project was put to judicial test and the law held constitutional by the United States Supreme Court.[14]

[14] *Milheim* v. *Moffat Tunnel Imp. Dist.*, 72 Colo. 268; 211 Pac. 649; aff'd in 262 U. S. 710.

Promotion of Civic Pride through Esthetic Development

Another Colorado project of moment is that authorizing the Denver Civic Center and the several beautiful parks within and adjacent to the "Queen City of the Plains". Assessment for the cost of acquiring land for these states and for the Civic Center was made against all the real estate in each park district of the city, which was divided into thirty-eight zones. The assessments ranged from $3 to $1100 per lot. The boundaries of the zones and the amounts apportioned to the several lots were fixed by the park commission, acting as an assessment board.

We have briefly noted the increasing volume of revenue derived each year from what has been termed "special" sources, in contradistinction to the mass of property in general, which remains the chief dependence, because of its familiar appearance in every taxing district.

Special Sources May Aid but Not Supplant the General Levy

The fact sought to be emphasized in this review is that "special" sources of revenue are indeed a real and eligible dependence as a supplemental and auxiliary resource; but by no means can they be relied upon, at this stage of economic progress, as a substitute for the general property tax.

Incomes, polls, inheritances, franchises, excises, production taxes, consumption taxes, and the rest of the "awkward squad" have, through dire need, been widely requisitioned, and they are obviously registering progress. But to the old guard — the well-marshaled forces under command of old Gen. Property Tax, must we look for years to come for the indispensable sinews of war.

In the face of a dismal prospect of over-population and race-decline, as forecast by certain eminent scientists, Arthur Brisbane, who is more of an economist than a dreamer, recently declared that the State of Texas alone could, under intensive cultivation, feed the earth's entire present population of 1,600,000,000. And far from race-extinction through sheer pressure of existence, he ventures the prediction that the next centennial will find in this country "a thousand million human beings, infinitely happier, richer and better off in every way than any population that has ever lived."

Rational Development in Prospect

Indeed, it does not take a Brisbane, a Bellamy or a Wells to discern the universal shifting of world affairs from the abstract to the concrete; from the general to the special. The decennium now just receding into the fateful scroll of history has recorded tremendous changes, for the most part we trust, conducive to the amelioration of mankind. What has been wrought during these

aptly termed "eventful years" is but a harbinger of a rational and sure development which lies immediately ahead. And in no field is there greater need for broad as well as intensive cultivation than in the hitherto neglected domain of public finance.

The general property tax remains a sturdy survivor of conditions which brought it forth long in advance of the present era of twentieth century civilization. It is still the backbone of the revenue resources of the local community in all the states. Yet, as we have seen from this cursory survey, there is an unmistakable craving for new and specific subjects of taxation—definite sources of public funds, that bear more or less direct relation to the governmental function to which the funds so sought are to be applied.

Taxes to Fit Special Governmental Functions

The allocation of special taxes to special functions, such, e. g., as the motor tax to the maintenance of highways,[15] will not only identify in the public mind the relative desirability of our various public necessities, but the appropriate method of their financing as well. Moreover, it will automatically release *pro tanto,* property in general, thus paving the way for just recourse to an *ad valorem* levy for funds to meet expenses of rural localities whose revenue sources are obviously limited and few.

[15] According to Mr. John E. Walker, former tax advisor to the U. S. Treasury, 36.3% of the $337,546,248 collected as special motor vehicle taxes in 1921, was available for highways.

It is unwise to close our eyes to proposed innovations, upon the ground that safety lies only in conservatism. A broader patriotism as well as obedience to the scriptural injunction will prompt us to "prove all things, and hold fast that which is good."

Finally, there is a certain degree of safety in "following the crowd," even in taxation schemes. Witness the gasoline tax, which was at first condemned, on the pretext that a consumption tax would be futile, since its successful evasion would require merely crossing the state line to fill one's tank at a non-tax station. But the rapid spread of the new device soon made that argument obsolete. Legislators everywhere seemed to revive in riotous refrain the ditty of a generation ago:

> "There's no use talking, no use talking;
> Its just so everywheres.
> If you do as the folks of the fashion do,
> You're bound to put on airs!"

Chairman Leser: I want to congratulate Mr. Vaughan for his obedience about the discipline of the meeting.

Mr. Holcomb has decreed that for a few moments we may hear

from a gentleman who would otherwise take up time tomorrow, when he won't be here. It has been usual at our meetings to hear pleas for the next meeting place, and in this instance Mr. W. O. Hart, of New Orleans, will have the floor for five minutes to present the claims of the greatest city in the southeastern corner of Louisiana.

(Mr. W. O. Hart of Louisiana thereupon extended an invitation to the association to hold its next convention in New Orleans.)

CHAIRMAN LESER: It may be interesting to note that the officers have been indulging in some statistics on their own account. The registrations up to noon today have been 390, the states represented, 45; there are also present four delegates from Canada and one delegate from Porto Rico.

The hour is young, just four o'clock, and if there is any disposition to discuss the theme presented by Mr. Vaughan, this is your opportunity. The chair will entertain any such suggestion.

MR. DOYLE: You have all heard Mr. Graves tell about the importance of statistics. I want to tell you a story of how the statistics were misunderstood and misapplied. A lady named McKay in New York had two children, and refused to have any more, in which stand she was encouraged by everybody; and she gave as a reason these statistics: she said, "I had only two children because I read in the paper that every third child born in the State of New York was a Jew."

MR. F. N. WHITNEY: Am I to draw the conclusion that Senator Vaughan anticipates that special taxes will produce all the necessary revenue, and that it will no longer be necessary to have the levy for state, county, school, road and other purposes, upon the capital value of the property? I hardly think he meant to go that far, but that is what I understood. He seemed to welcome the day when there would be no so-called general property tax, and that these special taxes would take the place of all the others, and that we would then reach the long-sought-for millennium.

Unfortunately, I am very familiar with this breed of special taxes. I won't quarrel with the theory, but I do quarrel very seriously with the practical administration of most of them. Of course, in such a case as the Miami conservancy district created by the Ohio legislature, the personnel of the commission was all that could be asked; the engineers and experts and the others associated with that commission were of a high type; they did a good job, and I do not quarrel with the results, because I think the benefits to the property, which was claimed to have been benefited, were assessed as near as the human mind could reach. But I have not found that quite true in all the other states, and the methods should mostly

be condemned. I can hardly see how we could in the future hope to substitute for taxes on the ad valorem basis these special taxes. Certainly it could not be on the theory that the benefits derived would sustain them.

Of course, I appreciate that Senator Vaughan did not base his entire theory on benefit, but he did lay great stress on that feature, and I wish to ask if he is in hopes that at any time it will be substituted for the so-called general property tax.

MR. VAUHAN: I simply wished to show the trend that statistics indicate toward special taxes. The fact sought to be emphasized in this review is that special sources of revenue are supplemental, not a substitute for the general property tax. In the end, the old general property tax must be looked to for years to come.

MR. WHITNEY: I gathered from the gentleman's remarks that he had that hope.

MR. VAUGHAN: No, indeed.

MR. WHITNEY: That the general property tax would be relegated to the rear. I do not think we could ever hope to reach such a situation.

MR. VAUGHAN: No, I do not think so. I have a greater faith in the general property tax than in any other tax that has been discussed.

MR. COLLINS (of Colorado): I should like to ask Senator Vaughan a question. In Denver we have the assessment for local improvements altogether on the property that is supposed to be benefited. Recently I received a letter from a man in Memphis, who had something to do with a taxing system there, and was making a research, and in his letter to me he stated that in Memphis they had always paid for special improvements out of general taxes, and they began to feel that perhaps that was not exactly the right thing.

Now, there are two extremes. I should like to know if Mr. Vaughan's research has led him to the point that he could state what the general trend is in that direction. Is it at either extreme, or is there middle ground?

MR. VAUGHAN: I got the impression from the investigation I made that there is a slight trend toward the adoption of a general tax to pay for what heretofore has been paid by special taxes, although there are numerous illustrations of the other case. In Arkansas we started out with a campaign several years ago for a very expensive program for roads. Now, we are getting out of it by the state devising a system of these special taxes, gasoline and others, which are taking over those bonds to a certain extent

or taking one-third of it every year. Both plans are approved by financiers, and it is hard to tell which is preferable.

CHAIRMAN LESER: I can add testimony to that. The City of Baltimore installed a complete system of sanitary sewerage and spent over twenty millions of dollars, every dollar of which came out of the general treasury.

MR. COLLINS: It has been suggested as an improvement on our present system, that, say, seventy per cent of the cost be assessed against the property receiving the benefit and thirty per cent out of general taxes. I wonder if anybody has had any experience with that sort of thing?

MR. LONG: One of the difficulties in Massachusetts is the difficulty you find in your state on special assessments as to sewer, water, and that kind of improvements. It will take but a few words to explain. A man has a house located on a street which has recently been opened up by his state or town and wishes a sewer extended. That is to be paid by the special assessment, proportioned to the number of feet that go by a man's land. In addition, the assessors come along and assess him a betterment figure, that is, a betterment price for the sewer, and in addition they say his property is more valuable because of the sewer. Then they come along and say: "Here, if you want to connect your house with this sewer, you have to pay for that also."

I think those special assessments go too far, and it causes a good deal of annoyance in Massachusetts, and I am not thoroughly converted to the idea that those special assessments carried to that extreme are fair.

It is going to be always true that when you put on any special benefit in a given district, whether it is a street or waterpipe or sewerpipe, whatever it is, property perforce becomes more valuable, and it has to contribute in larger measure to the general cost of government. I am not sure but what you go too far when you say that property shall pay the entire cost of that sewer extension. I think there is a great deal of danger of these special assessments being overdone.

I have another point in connection with this. We have in our state what is true of many other states; these assessments are made by boards other than the regular taxing authorities. We have sometimes the collection of those assessments made by other than the regular assessing officers, and we have had a great deal of confusion.

In Massachusetts I hope we have come to the time when we shall have all those betterment assessments made by the regularly constituted officers, and the assessments all collected by them, and I am not so sure but what I am opposed to those special assess-

ments going against the property, because in the long run they benefit the entire community, and I am not entirely in accord with Mr. Vaughan on the extent of those special assessments.

MR. CONVERSE (of North Dakota): We have gotten away from the president's address. There was no time for remarks after he closed, and I for one simply want to say that I think the study of expenditures is the most important thing that this conference and the National Tax Association can turn its attention to.

There are lots of folks who are willing to devise new methods of taxation, but there are very few that know the facts regarding public expenditures, and we, as an organization, cannot do our duty, and we as public officials cannot perform the service we should perform, unless the most careful study is made on the question of public expenditures; and this study having been made, an educational program is carefully worked out and carefully carried through to a conclusion.

I presume most of the men here are college graduates. How much did you learn, and how much did I learn regarding public expenditures in our educational courses? You could broaden the question a little further and ask, How much did you learn about our duties as citizens? I think, as a result of the program that the president has in mind and the members of the executive committee, that when we do have an accurate and thorough fund of facts, steps ought to be taken to get those into the minds not only of the voters, but into the minds of the rising generation through the educational system, those who are going to be the voters ten or twenty years hence.

CHAIRMAN LESER: In closing the session I want to make merely a brief observation about Mr. Vaughan's paper, of whether this whole matter of special assessments does not involve the question as to how far we want to enter into a bookkeeping account, how far government must enter into a bookkeeping account, with every individual citizen, measuring the particular benefits he gets from government. The meeting is adjourned.

ADJOURNMENT

TENTH SESSION

THURSDAY EVENING, SEPTEMBER 18, 1924

SAMUEL LORD, presiding.

CHAIRMAN LORD: The conference will be in order. I know it will be appreciated by the speakers if you will all come up somewhere in front, so that they may speak without too much effort.

We have on the program this evening the report of the committee of the National Tax Association that was appointed to investigate the matter of road taxes and finance—highway finance. That it is a subject in which all of us are very much interested, and some of us a good deal concerned with, and I am sure that this report will be both interesting and instructive.

I have very decided convictions upon this question myself, but I hesitate to express any of them in advance of this report, and I have pleasure in introducing to you the chairman of the committee, Professor Jacob Viner, Professor of Political Economy at the University of Chicago, who will read the report.

MR. JACOB VINER (of Illinois): Mr. Chairman, Ladies and Gentlemen: I shall proceed to the reading of the report with no introductory remarks, except to say that this is a unanimous report with the one qualification that one member, Mr. Brosseau, feels obliged to dissent from one sentence in the report. I also wish to say in explanation of the report, that your committee did not think it fell within its particular scope, at least at this time, to consider the difficult question of the financing of city streets or the relation of city street finance to the wider problems of highway finance in general; so this is on the financing of highways outside of urban areas.

THE PROBLEMS OF HIGHWAY FINANCE

REPORT OF COMMITTEE OF THE NATIONAL TAX ASSOCIATION

I. THE PROBLEM

The tremendous development of motor transportation in the United States has brought incalculable gains to the American people. Where means of rapid transportation of men and goods already existed, it supplemented them, by providing feeders and connections, by offering for goods alternative and more flexible

service, and for men what is often a more pleasant, faster, or cheaper method of travel than what was already available. It facilitated the extension of the area of metropolitan units of settlement, thus serving to check the growing congestion of population in the older portions of urban centers. It brought town and country into closer touch. It has in considerable degree destroyed the historic isolation of the American farmer, and by bringing him into closer contact with his neighbor, with the railroad, and with the town, has wrought significant changes in his social and economic life. The development of motor transportation has been one of the outstanding factors in the economic history of the American people in the last two decades, and it is difficult to overestimate the contribution it has made to American social and economic welfare.

So rapid a development of motor transportation as has occurred would not have been possible, however, without the exercise of tremendous initiative and enterprise on the part of government, in supplying the highway extensions and improvements needed to serve the new traffic demands. How great have been the demands made upon the state by motor transportation is indicated by the following estimates of the annual highway expenditures of American federal, state and local governments, exclusive of municipalities, and exclusive of interest on highway indebtedness, from 1904 to date:

Year	*Amount in millions of dollars*
1904	80
1914	240
1917	280
1918	286
1919	390
1920	500
1921	947
1922	898
1923*	940

There have nevertheless probably been relatively few instances in which the construction and maintenance of improved highways, suitable for motor traffic, have been carried beyond the existing or immediately prospective reasonable needs. The evidence, in fact, all points strongly to the counter conclusion, that highway construction and provision for proper maintenance have in general lagged behind traffic needs, and there is not yet any reason to anticipate an early substantial reduction in the annual rate of highway expenditures, although the peak has probably been reached. No part of this increase in highway expenditures can be attributed to any factor, other than the new demands of automobile traffic, for

* In 1923 interest on highway indebtedness accounted for about $60,000,000 more.

the total annual expenditures on highways prior to the advent of the automobile did not in any year reach ten per cent of the present annual expenditures and horse traffic has virtually disappeared from improved roads.

This increase in highway expenditures has in the main been justified by its results. But the main burden of financing these expenditures, which are huge in amount, falls now and must necessarily continue to fall, on state and local governments. These are already groaning under the financial burdens which they bear and their existing revenue systems, and in some cases even their basic economic structure, are inadequate to enable them satisfactorily to bear still greater tax burdens. The situation makes urgent a thorough survey of the problem, with particular reference to the questions of economy in highway expenditure, the resort to borrowing as a means of financing highway construction and maintenance, the equitable apportionment among taxpayers of the taxes necessary to provide highway revenue, the types of taxes to be used for this purpose, and the means whereby there can be secured an adequate degree of coordination of federal, state and local highway expenditures and revenues. Your Committee presents this report as a modest contribution to this task.

II. Economy in Highway Expenditures

Highway economy does not mean highway parsimony. Where highway improvements will be worth more than their cost, it is true economy to make the necessary expenditures; it is extravagance to withhold them, or to spend less than the minimum necessary adequately to finance such highway improvements as are economically justified. Retarded highway development means costly maintenance of outworn highways, excessive operating costs to automobile users, and arrested growth of such industrial and pleasurable activities as are dependent on advanced means of transportation. But there are many other avenues of waste in highway finance, some of which have been much traveled. Our experience with the special problems of automobile highway construction and maintenance has been, perhaps, of too short duration to permit of the detection of all of these avenues of waste, or to justify the dogmatic formulation of the principles which should be followed at every time and in every place in the expenditure of funds. Some problems, however, have been more or less clearly discerned, and for a few of these the available fund of experience has already disclosed effective remedies.

No primary highway should be constructed or substantially improved until after an economic survey of existing and potential traffic, conducted by competent technicians, along the lines developed by the federal bureau of public roads and the more efficient

of the state highway commissions, has shown that the improvement is economically warranted and has indicated for what volume and character of traffic it should be designed. The existing volume of traffic, prior to the making of the improvement, should not, of course, be alone relied upon in making the necessary decisions, for the prospective growth in population and in production should be taken into account, as well as the stimulus to traffic resulting directly from the more economical or more convenient mode of transportation brought about by the improvement itself. The mode of construction and especially the type of surfacing to be used should be decided upon only after reference to the results of local research with respect to the comparative costs of construction and of maintenance of the different types. Consideration should always be given to the possibility of the economic utilization of nearly building material resources, or of other means of transportation than the automobile highway.

The rule that no highway should be constructed or substantially improved until after a scientific survey has shown that the expenditure is economically justified, should be strictly enforced and should be made the means of guarding against any unnecessary or unwise extension of existing transportation facilities beyond the reasonable needs of the state or its facilities for payment. It should constantly be borne in mind that one of the urgent needs of American government at the present time is for a reduction of tax load and a check to the expansion of government indebtedness, with its attendant evils of reckless expenditure, impaired credit, a flood of tax-exempt securities and the legacy to later generations of a debt-liquidation problem of serious proportions. The state and local governments should be on their guard lest in their well-deserved enthusiasm for highways they carry their highway programs beyond their real needs or beyond their means for financing them.

Highway construction and improvement should follow a central and systematic plan, in order that individual projects shall eventually develop into a coordinated highway system instead of a haphazard collection of blind alleys and scraps. Once it has been decided, upon the basis of a careful survey, that a proposed highway project is immediately warranted by the traffic needs and potentialities, construction of its main framework, as rapidly as is consistent with the maintenance of competitive market conditions for bond flotations, labor, and materials, is economically urgent, since every mile of improved road adds to the value of the remaining mileage of improved road to which it is supplementary. Piecemeal construction often means wasteful gaps, which lessen the serviceability of what has already been built, trunk lines without feeders to bring traffic to them, feeders without access to trunk lines.

It is often desirable that sufficient right-of-way should be acquired, when an improvement is first planned, to permit of widening of the road surface at some later date, to meet the demands of increased traffic without excessive cost for land purchase or condemnation. This practice is especially desirable in urban terminal areas, where successive widenings of the highways are most likely to become urgent and where, in the absence of such precaution, subsequent widenings are liable to require expensive purchase or condemnation of buildings.

On highways in the neighborhood of urban centers of population there is likely to be a pronounced peak-load of traffic on summer week-ends, and roads which may provide generous accommodation to traffic at other times may at such periods be seriously congested. It is not economically justifiable to try to meet all the demands for ample highway accommodation for peak-load traffic of this character. Where the congestion is, however, confined to a limited mileage, usually the outlet roads for large cities, the provision of a few miles of wider or additional terminal roads, linking up the city streets with the rural highway system, will often be sufficient to reduce the peak-load congestion to tolerable proportions, without involving unduly excessive financial burdens on the state. Many urban automobile owners have no opportunity to utilize the rural highways except at week-ends and whatever can reasonably be done to meet their needs should be done.

No highway should be constructed or improved without immediate provision being made for the necessary maintenance to keep it in first-class condition. Adequate maintenance is necessary not only to make possible the complete and satisfactory utilization of the highways but also to preserve the original highway investment. The construction of expensive highways, which are then permitted to break up and disintegrate, because of a desire to "economize" on maintenance costs, is highly wasteful procedure. Another form of waste of highway facilities which is unduly prevalent is the failure to maintain the roads in condition fit for traffic during the winter months. Clearance of snow from the roads is not always economically justifiable, but where winter traffic would be present in volume sufficient to justify snow clearance if the roads were cleared, and is absent only because they are not cleared, there is a wasteful loss to the community during a part of each year, because of the enforced idleness of its highway investment.

The problem of the heavy motor truck is a difficult one that has led to many popular misconceptions as to the causes of undue damage to the highways. The heavy truck will here be considered to be the truck whose weight, unloaded, is five tons or over and whose weight, with a standard load, is eleven tons or over. Studies made by the bureau of public roads, in cooperation with state high-

way departments and others, show conclusively that the chief causes of highway deterioration are adverse weather conditions, which result in a breaking up of the sub-base, bad soil conditions, lack of maintenance and overloading of the road or the vehicle. Mere gross weight is not in itself the determining factor. Where the potential volume of freight traffic justifies the construction of roads designed to carry such vehicles, heavy trucks provide an efficient and economical means of freight transportation. But heavy traffic can do great damage to improved roads not designed for such traffic, if weather and soil conditions are adverse, or if traffic regulation is not adequate. The construction of roads, capable of handling, without excessive maintenance costs, a substantial amount of such traffic requires heavy additional expenditures for extra depth of surfacing and width of road. Sufficient economic justification for the construction of roads designed to handle heavy truck traffic ordinarily exists only in limited areas, such as densely populated industrial centers and trunk routes connecting large urban districts not too distant from each other. On ordinary improved highways not designed for such traffic, heavy trucks should be admitted only where there exist emergency or special needs for their operation, and only under special permit and subject to close regulation by the highway officials as to character and distribution of the load, condition of the tires, speed, condition of the roads, etc. Under such regulation even a light-surfaced road can carry a substantial amount of heavy truck traffic without excessive wear on the road.

There cannot be entirely effective maintenance of our public highways, and above all, there cannot be reasonably economical maintenance expense, unless there is adequate legislative provision for the regulation of traffic and adequate machinery, energetically administered, for the enforcement of such legislation. To prevent the uneconomic and unjustifiable wear and tear of highways, size, weight, load, speed, and tire-condition, regulation of motor traffic have been found absolutely essential. Effective traffic regulation, on the other hand, is not possible, without considerable centralization of highway control. The tendency is strongly in the direction of absolute state control over primary improved roads, and it is a desirable tendency. Uniformity of regulation is desirable not only for the various parts of the highway system within a state but also between states, and the latter type of uniformity can be secured only by voluntary cooperation between the highway authorities of the different states. The regulatory code should not be too rigid and should preferably be left to administrative authorities, subject to broad legislative limitations. The variables to be considered as to type of traffic, type of road, season of year, volume of traffic, special circumstances, etc., are too numerous to be dealt with in

adequate detail and with sufficient flexibility by legislation. Careful investigations by federal and state highway officials have shown that the great bulk of damage to roads is done by abuse rather than by reasonable use thereof. Traffic regulation should be directed, in the main, to fostering the maximum use of the available highway facilities and should have a punitive trend only against unreasonable use of roads.

To secure proper direction and economic control of highway expenditures a substantial degree of centralization is necessary. Prior to the coming of motor transportation, roads were, with a few outstanding exceptions, built and maintained by the local communities. The first influence of the advent of motor transportation was to secure the extension and improvement of these local roads, so as to facilitate communication between neighboring communities. Later the counties, and still later the states, assumed some measure of responsibility for and authority over the road system, mainly in order to develop chains of local roads connecting the larger cities. Every state in the Union has now some form of highway department with powers of control ranging from complete authority over minute details of state and local expenditures for construction and maintenance, to merely advisory functions for the state highway and no jurisdiction whatsoever over local roads. The trend, however, is decidedly in the direction of greater centralization, in inevitable response to the needs of the situation. In very recent years all the states, with the cooperation of the federal bureau of public roads, have planned and have made substantial progress in the construction of thoroughly coordinated systems of improved highways, providing both through routes of state and national importance and systems of secondary roads subsidiary to these through routes. Some states have initiated purely state projects, going beyond the federal plan.

The inevitable consequences of local control of primary roads are piecemeal construction, inadequate and varying construction and maintenance standards, lack of coordination and the continuance of costly gaps in the system, excessive costs, because of lack of knowledge of recent developments and of the results of scientific tests and investigations. There should be state control of all roads which are not almost wholly of a strictly local character, serving merely the community in which they are situated. As population and motor traffic grow, more and more of what are now local roads will be absorbed into the state highway systems and should come under state control or supervision. Even before local roads are placed under any degree of mandatory state supervision, the state highway departments should develop facilities for giving to local authorities in systematic fashion guidance with respect to most suitable road materials, mode and location of road construction,

material and labor prices, bond flotations for roads, maintenance standards, etc.

III. The Borrowing vs. the Pay-as-you-go Methods of Highway Financing

The modern automobile highway is in large part a "permanent" improvement. The location, right-of-way, subgrade, drainage, and many of the structures are permanent, and competent engineers estimate the permanent portion of improved highways to account for from forty to sixty per cent of the total construction expenses. Maintenance expenditures should be sufficient to preserve the improvement in as good shape as when first constructed. The generally accepted rule that the maturity of bonds for financing improvements should not extend beyond the life of the improvement fails, therefore, to set an adequate limit to the resort to borrowing to finance highway construction, and guidance must be sought in more fundamental principles, in determining the extent to which borrowing is justified.

During the initial period of construction of an extensive system of improved highways, densely populated and rapidly growing states, and states where the immediate need for the construction of improved highways is urgent, would be unwise to attempt to finance highway construction wholly or even in large part from current tax revenues. If current revenues are relied upon under these circumstances, there will result either an intolerable tax burden on the community or else there will be an unreasonable retardation of highway construction, entailing to the community the loss for many years of the advantages of improved means of highway communication. Such a financial policy would be likely to lead, moreover, to piecemeal construction, with the result that the utility of each mile of improved road will for many years be reduced, as compared to the possibilities if, once the system were carefully planned, a program of rapid completion of its general framework were embarked upon. States and localities, however, which have already made considerable progress in highway construction and have already passed the peak of new annual mileage, should move gradually toward the pay-as-you-go basis. This could be accomplished, partly by shortening the maturity of new bond issues and partly by increasing the proportion of new construction costs met out of current revenues. Maintenance and reconstruction costs should, under all normal circumstances, except perhaps where the reconstruction involves a substantial improvement in the more permanent features of the old road, be financed from current revenues.

In more sparsely settled states, where road mileage per capita is great, where there are no large urban centers of population, and where industry is mainly agricultural and specializes in the produc-

tion for distant markets of a few staple products, the local roads to the railroad stations are by far the most important part of the highway system. In such states the demand for road construction and improvements will continue for decade after decade at a comparatively uniform rate, and improved roads should not be constructed much ahead of the growth of population to utilize them. In such states road construction should be financed with little or no recourse to borrowing.

Loans incurred for highway construction should not have a longer maturity than thirty years, and preferably not more than twenty years, and should be of the serial bond type. While a substantial proportion of the original cost of highway construction is properly to be regarded as a more or less permanent investment, this is not sufficient to justify the resort to bond issues of indefinitely long maturities. Resort to bond issues, with excessively long maturities, is liable to stimulate reckless and wasteful expenditures, since the resistance of the taxpayer to bond issues is much less than to increases in tax levies. In any case, there is comparatively little advantage in the annual cost during the first twenty years, of paying for an improvement on a twenty- as compared to a forty-year basis, but there is a tremendous difference at the end of the twenty years, depending upon whether the one maturity or the other had been chosen. The accumulation of debt, without provision for its early liquidation, impairs the credit of the borrowing agency and if funds are later needed for emergencies or for the new activities which democracy is constantly demanding of government, they will not be obtainable or will be obtainable only at usurious rates. We cannot see clearly enough into the future to be certain that new transportation needs or facilities may not develop which will render obsolete much of our present huge investment in automobile roads. There is always the danger that a highway has not been properly planned and that it may have to be rebuilt in another way or in another location. "As the highway systems are completed, the traffic will become more and more organized, and concentrated on the improved highways. If these systems are not properly selected, they will have to be revised and so much of the investment jeopardized." [1]

IV. Principles of Taxation for Highway Purposes

Until the latter half of the nineteenth century main highways or trunk lines were largely privately constructed and operated and were financed by tolls levied upon the users of the road. Local roads were constructed and maintained, as now, by the local governments and were financed out of the general local revenues or

[1] Thomas H. Macdonald, Director of federal Bureau of Public Roads, in address before United States Chamber of Commerce, May 16, 1922.

by special local road taxes, payable in labor or in cash. Unsatisfactory maintenance of the trunk roads by their owners and the exaction of extortionate tolls led gradually to the taking over of the roads by the local or county governments, but in the earlier stages even state roads were often financed out of tolls levied on the users. The inconvenience and irritation of the toll system to road-users, the growing recognition of the general utility of highways, and the general acceptance of the principle that government services should be financed by taxation levied on the ability principle, were all contributing factors in bringing about an almost complete abolition of the toll system and the financing of roads out of the general revenues of the local, and, later, the state governments. Today there survive only slight traces, here and there, confined largely to bridges, of the once-dominant toll system.

The advent of the automobile brought the need of a greatly improved and extended highway system and threw upon the state and local governments a great additional financial burden which, because of their inadequate and obsolete revenue systems, they were ill-prepared to assume. A partial solution was sought in a return to the benefit principle of taxation, a part of the cost of highway financing being thrown on the direct users of the highways, but in the form of special automobile license or registry taxes, and in the last few years, of gasoline taxes, without resort again to the abandoned toll system. The tendency toward imposing on highway users an increasing portion of the cost of highways is becoming more marked each year. In 1914 the federal and state special taxes on motor vehicles amounted to only five per cent of the total highway expenditures; in 1921 this percentage had increased to about twenty-five; in 1923 it reached approximately thirty-eight per cent; and in 1924 it promises to equal or surpass forty-five per cent. Since about forty per cent of the highway expenditures are met by borrowings, the time is rapidly approaching when special motor vehicle taxes will equal the expenditures on highways, both primary and local, from current tax receipts.

The varying circumstances in which different states find themselves, with respect to highway burdens, and the fact also that American public finance is not governed to any important extent by formulas, meritorious or otherwise, but is largely the product of historical traditions, inertia, and the play of political factors, make it academic to present any rigid formula as the proper solution of the problem of apportionment of highway costs. Your committee is not prepared to recommend any fixed percentage of total highway expenditures as the proper percentage to be financed by special taxation of motor vehicles. The different stages of highway development reached by different states, the difference in the relative burden of highway finance in different regions, because of differ-

ences in the density of population, in per capita mileage of roads, in climatic conditions, in availability of highway building materials, in per capita ownership of automobiles, make different distributions of the burden politically inevitable and probably also theoretically equitable, and no one formula will best suit the needs of all the states. But for all states, except those at the very inception of their program of improved highway construction, special taxes on highway users should be sufficient to defray a substantial part of the costs of construction and of interest on highway indebtedness, as well as all of the maintenance costs of primary highways. The tendency in highway finance is strongly in the direction of placing on highway users an increasing proportion of the burden of highway finance. We approve of this tendency, not only as an inevitable resultant of the pressure of facts, but as thoroughly consistent with equity and with expediency.

Roads of a purely local interest, serving only local needs, should be financed out of local revenues, obtained either from local general tax revenues or from special assessments on adjoining land. When such local roads, however, are improved and absorbed into the state highway system and lose their purely local character, they should be financed out of state funds, derived mainly from motor vehicle taxes. Special assessments ordinarily have no place in the financing of primary roads. They should be used in connection with the financing of local roads, only to meet part of the construction cost and the amount of the assessment should never be greater than the increase in the market value of the adjoining land which would unmistakably and immediately result from the improvement. We do not regard as within the scope of our task a consideration of the problem of the financing of city streets.

Special motor vehicle taxes for highway purposes represent a return to the principle that those who derive direct benefit from government services should contribute to the cost of such services, in proportion to their benefit therefrom. Some modern writers on public finance have largely thrown this principle overboard, and find little or no proper scope for its application beyond its limited use in the levy of fees and special assessments. The trend of taxation practice for other than highway activities has during the last few generations also been decidedly away from the benefit principle and toward the principle that government services should be made freely available to all and should be financed by taxation according to ability. The field of highway finance presents almost the only instance—if not actually the only one—in modern American financial history, of the sharp reversal of the trend from benefit taxes to ability taxes. Is this reversal of the trend justified? If so, has it gone too far or should it go still further?

The abandonment of the benefit principle was due in the main to

the influence of the modern concept of the social solidarity of the people, which appeared to justify the policy of requiring the more prosperous classes to pay the cost of services which the poorer classes would in large part enjoy. Under the influence of popular pressure, governments extended their functions so as to include new types of activities, expensive to finance and many of them distinctly serving the masses of the people rather than the wealthier classes. The poor could not afford to meet the cost of these new activities, without making serious sacrifices. The main objects and results of the shift from the benefit to the ability principle were, therefore, (1) to enable the government to provide for the masses, services whose costs the latter could not or would not directly defray, and (2) to shift the burden of financially supporting the more general activities of government from the population as a whole to the relatively wealthy classes.

To the extent that the great rise in highway expenditures has been incurred on behalf of the non-industrial automobile use of roads, the ordinary argument for the application of the ability principle fails altogether to apply. There is not any problem here of making a government service freely available to the poorer classes, who otherwise could not afford to avail themselves thereof. The really powerful arguments against the benefit principle of taxation, namely, that it shifts burdens to those who are not able to bear them and that it therefore makes impossible the financing of such government activities as are predominantly for the direct benefit of the masses, have, therefore, a narrowly limited applicability to this phase of the modern problem of the financing of automobile highways.

In the case of commercial and industrial automobile use of highways, the situation is not essentially different. The benefits of the improved primary highways accrue immediately to the automobile owners, in the form of lower transportation costs, and will in general be passed on to consumers in the form of lower prices or else will be absorbed as extra profits by the producers or the owners of productive property. To the extent that the general public shares in the benefits of cheaper transportation, special taxation of highway users will be passed on to them. In the last analysis, owners of industrial automobiles will shift any special automobile taxes imposed on them to those who derive the economic benefit from the highway improvements.

There can be no reasonable ground for doubt that the direct benefits from highway improvements go in the first instance to the automobile owners or to those who are directly served by automobile transportation. These are not, of course, the sole beneficiaries of the highways, but they are by far the chief ones. That there are secondary benefits from the use of highways, which

accrue to others than those immediately served by highway transportation, is not a valid objection to the financing of highways on the benefit principle. No one would contend, because there are secondary benefits from the existence of a suitable water supply, which accrue to others than those who actually make use of the water service, that it is unfair to finance a municipal waterworks by special charges on those who are directly served by it. If any municipality ever departs from the benefit principle in financing its waterworks, it is not because of the existence of indirect and secondary benefits to the general community from the water system, important as these are, but to relieve the poorer classes of the necessity of meeting the cost of the direct benefits accruing to them. Where electric or steam railroads are operated by the state, it has not been generally regarded as inequitable to the direct users of these public works, that the special charges to users should be sufficient to finance the enterprises. But these are indirect and secondary benefits accruing to others than the direct users, in the case of railroad transportation, as much as in the case of highway transportation.

Were the issue in the case of highway finance really between the ability principle and the benefit principle, it would not much matter, in so far as the equitable distribution of the burden of highway costs was concerned, which method was chosen, since either method would, in the ultimate analysis, probably result in about the same distribution of taxes. But the real alternative in state and local highway finance in the United States is between the benefit principle and the general property tax. It has been repeatedly disclosed by careful investigators that the general property tax works out in practice at a higher rate on small parcels of property than on large. A large fraction of the property tax on improved real estate and on personal property, moreover, is unquestionably shifted by the first taxpayer to the masses of the population, in the form of higher house rents and higher prices for commodities and services. It is altogether probable that with the existing distribution of ownership of automobiles, the financing of primary highways by special taxes on highway-users will conform more closely to the ability principle than will the resort to the general tax revenues of state and local governments for highway funds.

The argument from expediency also justifies the resort to automobile taxation as a means of financing highways. In most of the American commonwealths the existing revenue systems are already strained to the utmost to meet the calls for revenue from the expanding programs of government activity. The tax burdens on real estate and on the farmers in general are already as great as they can reasonably be expected to be able to bear. The great need in state and local finance is the discovery and adoption of

means to lighten the tax load on the overburdened classes. To finance highway expenditures out of general revenues means in practice to finance them by additional taxes on tangible property, real and personal. Under existing conditions it is much more equitable to place the burden of highway finance on those who use the highways in proportion to their use, rather than on property owners, irrespective of their use of the highways.

The payment by highway users of all maintenance costs of primary highways and of a substantial portion of construction costs and interest on indebtedness incurred in the construction of primary highways is well within the limits of their reasonable capacity. The motor vehicle registrations in 1923 in the United States totalled 15,092,000 and will undoubtedly pass the 17,000,000 mark in 1924. Although primary highways now comprise not more than ten per cent of the total road mileage of the country and probably will not exceed for a long time twenty per cent of the total mileage, they account for eighty-five to ninety per cent of the total highway costs. The average levy per automobile, which would pay all maintenance and interest costs and would provide a generous fund for amortization of construction costs of primary roads would not greatly exceed the average special tax burden per automobile now imposed. The annual registration of automobiles is increasing more rapidly than the annual highway expenditures, so that the average levy per automobile which would be necessary to finance all the highway costs, for *secondary* as well as primary roads, is progressively diminishing. If the expenditures of automobilists on the upkeep of their cars, on gasoline, and on garage hire be considered, it is not unreasonable to hold that an annual levy, adequate fully to meet the program laid down in this report, would not be beyond their ability to pay and would not exert an appreciable adverse influence on the rate of development of automobile transportation. While your committee does not recommend that the cost of purely local roads should be met by special motor-vehicle taxation and while it does not regard it as immediately practicable that even all primary road costs should be financed by motor-vehicle taxes, it regards with approval what appears to be a tendency in this direction and welcomes progress toward that goal, especially for states and counties which have completed or are approaching the completion of the construction of their primary system of improved highways.

The resolution of the National Tax Association authorizing the appointment of this committee, instructed it to consider the question of "the coordination of the taxation of transportation agencies using highways with other transportation agencies." Motor transportation, whether of passengers or of freight, and whether as a common carrier, for hire, or for personal use, is not wholly com-

petitive with other modes of transportation, but is, to an important and growing extent, complementary to them; but even where it is essentially complementary, the sound method of determining where one shall begin and the other shall end is through the free play of supply and demand, after each type has met all the costs properly attributable to it. If any type is permitted to escape meeting any of the costs with which it can properly be charged, the result is an artificial stimulation of the favored type, which leads to its expansion beyond its natural economic limits and is unfair to competing methods of transportation and to the general taxpayer. If the program of highway finance laid down in this report were executed, your committee is of the opinion that all justification would be removed for charges against motor transportation that it is being subsidized in its competition with other transportation agencies.

V. Apportionment of Highway Costs between Federal, State and Local Governments

Our report has already urged the importance of centralized control over the planning, construction and maintenance of primary roads. But under the American type of political organization, no great measure of centralization of financial control is feasible, unless it is accompanied by the assumption on the part of the central authority of a substantial measure of responsibility for financing the activity in question. Except through centralized financing, moreover, it is impossible to apportion the costs of a coordinated highway system, in even rough accordance with the territorial distribution of benefits from highways or with the territorial distribution of ability to pay.

Federal aid to highways has been valuable under these circumstances. By its highway grants the Federal Government has secured the opportunity of giving advice, of laying down minimum engineering standards of construction and maintenance, of assuring the development of a nationally coordinated highway system, and also of lightening the burden for those states of sparse population and long distances, which are crossed by important national automobile routes, but which could not reasonably be expected to meet the full cost thereof from state and local revenues. It is important that federal aid should never be given, without conditions being attached which will assure their proper utilization, but the administration of federal highway aid by the federal bureau of public roads, under the able direction of Mr. Thomas H. Macdonald has been of a highly satisfactory character and is entitled to the commendation of all who are interested in the full and scientific development of the American highway system.

The Federal Government has collected in special taxes on motor

vehicles and parts, to June 30, 1923, a total of $589,012,000, but during the same period has spent on highway aid to the states and on forest roads, including administrative expenses, a total of $264,782,000, or only forty-five per cent of the receipts from motor vehicle taxes. Your committee recommends that the Federal Government should derive the revenues which it devotes to highways from the special taxation of highway users, Mr. Brosseau, however, dissenting.[2] These federal taxes should, if possible, take some form other than an advalorem tax. To the extent that its aid is granted to projects constructed primarily to serve the purpose of national defense or to open backward regions to colonization, the Federal Government would be justified in using funds derived from general tax revenues. But the Federal Government should not levy taxes on motor vehicles as such[3] in excess of what it spends on highways. The reduction in the taxes on motor vehicles and on motor vehicle parts effected by the Revenue Act of 1924 meets, therefore, with our approval. We recommend the total elimination of the remaining federal excise taxes on motor vehicle parts.

Similar considerations to those discussed above, in connection with the relation between federal and state highway finance, apply with even greater force to the relation between the states and the political subdivisions.[4]

The counties, and even more so, the smaller political subdivisions, are no longer proper units of highway finance, so far as the financing of primary roads is concerned. Dependence on local revenues for a substantial portion of the cost of primary highways means either gaps in the highway system, because some localities are laggard in making financial provision for improved highways, or the overburdening of some localities with excessive taxes or debts. Local financing of primary roads inevitably results in serious territorial inequalities in tax burdens, because of varying relations of mileage and local traffic to population and per capita wealth. Where the state develops main highways, through the linking up at its own cost of local roads, localities which had been backward in improving their roads escape their due share of the cost and locali-

[2] Mr. Brosseau presents the reasons for his dissent in a statement appended at the end of the report. The other members of the committee are of the opinion that the general reasoning of this report, in support of the principle that highway expenditures should be financed by special taxes on highway users, applies with as much force to federal as to state highway expenditures.

[3] Your committee does not feel that a consideration of the equity of levying taxes on motor vehicles as consumption taxes is within the proper scope of its task.

[4] With the exception, perhaps, of cities, whose street finance problems do not come within the range of this report.

ties which had shown more than the average degree of enterprise in constructing improved highways bear an undue share of the cost. In those instances where the finances of local governments have become seriously involved, as a result of highway expenditures, it has usually been because they have assumed a disproportionate share of the burden of financing the primary highway system and have not received adequate aid from the state. The problem of highway finance, however, is becoming less serious for the local political units. The states are rapidly increasing the amount of highway aid which they grant to the localities. The construction and improvement of highways generally operate to raise the economic status of districts hitherto backward, because of their lack of advanced means of transportation. Government studies have shown that the improvement of main roads tends to lessen the volume of traffic on local roads and thus reduces the maintenance burden falling on the local governments.

For purposes of highway finance, roads should be classified as local and primary highways, according to whether they serve purely local needs or the needs of wider areas. Local roads should alone be financed by the locality, whereas primary roads, serving a wider area, should be financed by the state. The principle here is sound in theory but is difficult of application. As the extension and improvement of the highway system progresses, it approaches ever more closely to being a unified whole, requiring control and financing on that basis. It is desirable, therefore, and it becomes more urgent with every expansion of the highway system, that highway costs be met as far as possible from state revenues, derived from state taxes, uniformly levied throughout the state. It is impossible to render exact justice as between the different localities, but the nearest approximation thereto can be made, especially as between, on the one hand, sparsely settled or poor rural districts, through which run expensive primary highways, and on the other hand, the urban centers, which provide much of the traffic for these highways, if the state government assumes the entire burden of financing primary highways, leaving to the counties the financing out of local tax revenues of local roads not constructed or maintained in condition to be satisfactory for through motor traffic or used solely, or almost so, by traffic originating and terminating within the immediate locality.

Where the state provides all or part of the funds for financing the primary highway system but the actual expenditures are made by the local governments, careful consideration should be given to the mode of apportionment of the state aid to the local governments. As in the case of federal aid, conditions should always be attached to the grants, to assure that the expenditures will be made in the manner best designed to carry out the state highway pro-

gram. Apportionment of state funds to the localities, according to a rigid and arbitrary formula, whether it be in proportion to population, road mileage, area, local highway expenditures, or equally to counties, all of which methods have been used, either singly or in combination with others, by one or more states, is bound to operate unsatisfactorily, for no one formula, no matter how carefully devised, can make adequate provision for the varying needs of different localities. A number of states fix the method by which apportionments shall be made by a special legislative act for each apportionment. This is preferable to the fixed-rule method, but is open to the objection that it leads to political log-rolling and unscientific allocation of the funds. At least twelve states leave the apportionment of the funds to the state highway officials, subject to such broad limitations as the legislatures deem essential. Your committee recommends this last method as the one best designed to secure a scientific and equitable apportionment of state funds.

VI. Motor Vehicle Taxes

All of the states levy registration taxes on motor vehicles and some three-quarters of the states levy gasoline taxes in addition. There is no uniformity between the states, either as to the bases for determining the taxes or as to the rates of tax. The states base their registration taxes on value, cubic-inch displacement, weight, gross weight, or horse power, or on a combination of two of these. One state levies a flat license fee, uniform for all motor vehicles. One state levies a registration tax based on value, weight, horsepower, and previous number of registrations. Where horse power or weight is used as the basis, some states levy a flat-rate tax per unit of base; other states make the rate per unit rise progressively as the base rises; a few states make the rate per unit fall as the base rises. Some states levy heavier rates on automobiles with solid tires than on automobiles with pneumatic tires; other states do not. The gasoline tax rates vary from one cent per gallon to four cents per gallon. Some states tax all gasoline, whether used to propel motor vehicles on the highways or not; other states make varying exemptions for gasoline consumed otherwise than as motor vehicle fuel. Whether gasoline taxes are levied or not does not always appear to influence the rates of the registration taxes levied on automobiles.

If only one motor vehicle tax were to be levied, the gasoline tax would appear to be preferable to the registration tax. The factors of most importance in estimating the costs accruing to the state from automobile traffic are the mileage traveled, the gross weight of the vehicle, and the speed at which it is driven, and the amount of fuel consumed reflects in some measure all of these factors. The gasoline tax is conveniently paid, easily collected and easily

administered. It is the only practicable mode of reaching highway users from other states than that levying the tax. Even where the tax is opposed at first by motorists it wins their approval, or at least their toleration, after it has been in effect for some time and they have grown accustomed to it. There is a marked tendency toward general adoption of the tax and toward a two-cent or a three-cent, rather than a one-cent rate. The yield of the tax has been moderate so far, but with the increases in rates recently introduced and the adoption of the tax by more of the states, it has been estimated that it will yield over $50,000,000, in 1924, as compared to approximately $30,000,000, in 1923 and $12,700,000 in 1922. A three-cent tax on all the gasoline consumed in the United States by automobiles would net at least $150,000,000.

Registration taxes appear to be necessary, even where gasoline taxes are in effect, in connection with the regulation of motor vehicle ownership and operation. They also are useful, because they can be devised to take more fully into account the influence of weight of car, weight of load and type of tire on highway wear and tear, than does fuel consumption. A further factor in favor of the levy of registration taxes, even when gasoline taxes are levied, is that highways in general are constructed on a scale sufficient to accommodate the peak load of traffic and an automobile which is in the garage most of the year, and therefore consumes little gasoline, but is operated on the highways when traffic is at its peak, escapes its due share of taxes if it is taxed only on its gasoline consumption. A greater measure of uniformity between the states in the bases used for levying registration taxes is, however, highly desirable. Gross weight, by which is meant the weight of the vehicle loaded with a standard load, is the best, as it is the simplest base. Where weight or gross weight is used as the basis of taxation, your committee recommends that the rate of tax, per unit of weight, should be graded upwards as weight increases, the gradation of rates to be determined on the basis of engineers' tests of the comparative wear and tear on the roads and use of road space per ton of the different weight vehicles. Since the primary purpose of motor vehicle taxation now is to make the highway user meet in whole or in part the cost of the construction and maintenance of automobile highways, there is no justification for registration taxes which take into account the value of the vehicle, such as advalorem taxes, taxes which make allowance for the depreciation of the vehicle, or horsepower taxes, intended to reflect the value of the vehicle. Even though there may be some relation between value of the vehicle and wear and tear on the roads, the latter can be better taken into account by other means than through taxation on the basis of value or some index of value. It is not reasonable to ask that the rates of tax, whether for gasoline taxes

or for registration taxes, should be uniform as between the states, since the different financial requirements for highway purposes of the different states justify different rates of taxation. It is recommended, however, that each state, before fixing its rates of taxation, should survey the financial requirements for highway construction, interest on highway indebtedness and highway maintenance (including its grants in aid to the counties and after allowance for what is to be received as federal highway aid), should determine what proportion of its highway expenditures is to be met by motor vehicle taxation and should adjust the rates accordingly. It is also recommended that the counties levy no charges in connection with chauffeurs' or operators' licenses and that the states levy no such charges, other than very moderate license fees not exceeding $1 each.

The levy of advalorem rates on automobiles as personal property under the general property tax is not considered to be a special tax on motor vehicles or to have any direct relation with the problem of highway finance, and is therefore not regarded as falling within the scope of our report. Where motor vehicle registration taxes are levied in lieu of personal property taxes, only such parts of the registration tax revenues are to be regarded as special taxes on highway users as are in excess of the amounts which automobiles would pay under the personal property tax, if they were not exempt therefrom.

There is no uniformity in usage as between the states in the disposal of revenues from special taxes on motor vehicles. In most of the states they are used solely or mainly for highway purposes, but in some states important fractions thereof are diverted to other than highway purposes. Some states segregate their motor vehicle tax funds for construction purposes, others for the payment of interest on and the amortization of highway indebtedness, others for road maintenance expenses, and still others reserve them for highway purposes in general, without further statutory specification. Many states distribute the proceeds of the motor vehicle taxes in part to the counties; other states reserve them wholly for their own use.

Your committee recommends that each state determine what proportion of its highway expenditures it proposes to finance from the proceeds of special taxes on motor vehicles and that it do not levy taxes on motor vehicles in excess of the rates necessary to produce such amounts of revenue, and it further recommends that in no instance shall the special taxes on motor vehicles exceed in amount the total highway expenditures of the state, after deduction of the amounts received as federal highway aid, but including the amounts distributed to the counties for highway purposes. Your committee cannot recommend, however, the rigid segregation by statute of the

proceeds of motor vehicle taxes for use solely for highway purposes. Segregated treasury funds increase the interest expense of the government, by cutting down the supply of available cash. It is important for the economical administration of state funds, that special funds be eliminated entirely and that all receipts be placed in one general account. The proper balancing of highway expenditures and motor vehicle tax revenues should be provided for in the preparation of the state budgets rather than by rigid statutory requirements.

JACOB VINER,
Associate Professor of Political Economy, University of Chicago, *Chairman*

THORNTON ALEXANDER,
Solicitor, Boston & Maine Railroad Co.

A. J. BROSSEAU,
President, Mack Trucks, Inc.

C. C. CONVERSE,
Tax Commissioner of North Dakota

MAURICE GROSHON,
Chairman, State Board of Equalization, Wyoming

W. H. MALTBIE,
Counsel, American Electric Railway Association

W. G. QUERY,
Chairman, South Carolina Tax Commission

STATEMENT BY MR. A. J. BROSSEAU

Before stating the grounds for my dissent to a single item in the report of the committee on highway finance, I desire to express my regret that I cannot give an unqualified endorsement to a statement which I believe in all of its other essential elements to be a fair and complete summary.

The dissent to the recommendation that special federal taxes should be continued on motor vehicles, to offset federal highway appropriations is *not* based on any objection to the motorist's participation in a substantial share of the costs of the highways which he uses. Instead, I have cordially supported that principle as laid down elsewhere in the report.

The objection to the recommendation is based on the fundamental ground that there is no relation between federal appropriations for public improvements of general benefit and the discriminatory excise taxes which were levied against the motor vehicle

after the Federal Aid Act had passed and solely for the purpose of meeting emergency war revenue needs. It has never been the purpose of Congress to pick out a single industry to pay for improvements of benefit to all and there is no more ground for doing so in this case than in appropriations for rivers and harbors and other similar purposes. In fact the whole attitude of Congress has been to repeal these taxes, and I hope and believe that when, and as revenue needs permit, the automotive taxes will go as taxes on railroads, telephones, telegraphs and others have gone.

Further it is my belief that the field of special taxation of motor vehicles is one which should properly be left to the states. The Government appropriates funds for primary highways on the constitutional grounds that they facilitate communication and promote the national defense. Federal aid amounts to but fourteen per cent of the total highway program and has its greatest value not in its amount but in the standards which it sets up. Surely such a purpose is one in which the whole public is concerned.

For these reasons, while accepting the rest of the report wholeheartedly, I dissent from the majority opinion recommending continuance of special federal automotive taxes.

A. J. Brosseau.

Chairman Lord: I am sure you will all agree with me that Mr. Viner has read a very interesting report, and after making an announcement, we shall be very glad to hear any observations from any of you, within the time limits, upon the report.

It was thought that, if possible, the report of the resolutions committee of the conference might be presented tonight, but we have whatever discussion there may be on this report to listen to, and also another paper, which is to be presented tonight. I shall be glad to hear any one who has observations to make or any suggestions in regard to this report, under the rules.

Mr. Richard W. Meade (President of the People's Motor Bus Company, St. Louis, Missouri): Mr. Chairman, Ladies and Gentlemen: There is one point in connection with the levy of gasoline taxes which it seems to me has not been sufficiently considered, and that is that while the construction of roads is of immense benefit to the states through which they run and the property that they reach, the gasoline tax places that tax very largely upon one particular class of the community; one particular class that benefits in a measure from the roads, but not specifically or in such a complete way as the trend of this report seems to show.

There is another point which it seems to me should be considered, and that is that a very large part of this gasoline tax is paid by users of automobiles, particularly commercial automobiles, that are largely centered in the cities and never use the state roads.

In this particular state it is estimated that fifty per cent of the commercial automobiles and the other automobiles are used in the cities, and a very large part of those never go out on the state roads. On the particular industry that I represent, which uses almost exclusively city streets, the gasoline tax will bear with great burden, and will add approximately two hundred dollars per vehicle per annum to the already existing tax, which amounts to about fifty dollars per vehicle per annum.

The motor bus as used in cities has been very largely taxed on the basis of a percentage of its gross earnings, which is a very proper form of tax, and the experience of this company in St. Louis this last year shows that it paid at the rate of about eight hundred dollars per annum per vehicle for this privilege. At the same time that it is using the city streets and rendering the service, it is paying a tax enormously in excess of any other class of vehicles using the streets.

Trucks, which are far more destructive to streets than the motor bus, with its large flexible springs, proper distribution of weight, and never overloaded, paid nothing but the gasoline tax and the registration tax.

I do not think there is anything else in the report that I could take exception to. I think it is a very excellent report; it shows a great deal of study.

There is one other point, and that is that it seems to me that some general supervision should be authorized over the size and weight of the commercial vehicles used on the state roads. It is the old case of the gun and the armor. As battleships were increased in size, the armor of the turrets was increased to meet the projectile, and the gun was increased in power until the turret could be penetrated; so the fight between the armor and the gun continued. The same thing is going on all over the United States on the roads. We are building roads with a foundation sufficient to carry a certain type of vehicle, and another one is put on which is enormously in excess of the capacity of that road to carry. That thing should be taken into consideration and some control had over it.

Mr. McKenzie: It seems to me that the point raised is worthy of careful consideration by this meeting. What we are likely to get into, as I see it, is a situation in which we already are with regard to death duties. This association has been discussing them very thoroughly at this meeting, and I think it is the almost unanimous opinion that the Federal Government ought to abandon those death duties, and leave that field of revenue to the state. It seems to me that if we adopt this report as submitted, we are going to get into precisely the same situation in regard to these automobile taxes, we are going to endorse the continuation of automobile

taxes by the Federal Government, which, as I take it, most of us believe ought to be left as a source of revenue to the states. It seems to me that thing ought to be threshed out pretty carefully before we vote on it.

CHAIRMAN LORD: I suggest to Mr. McKenzie that reports of this kind are never voted on by the conference. It is only resolutions that are presented by the resolutions committee that have the formal action of the conference; so that this is simply read and put into the record, and it is available for anybody who cares to study it, but no formal pronouncement is made upon it by the conference.

MR. DYER: I think that report is the most valuable thing that has been read to this conference during the sessions; it is to Ohio, anyhow. I have never studied the situation as to what the National Government takes from the other states, but I have studied it in Ohio. The National Government gets fourteen per cent out of our state in taxes for all purposes, and the state gets a small amount of it back for roads. It takes road money from the wealthier states and helps the states that cannot build roads. They take the money we get out of Ohio and they send a dollar back to our state highway department. The state matches it with another dollar, and then they hold the two dollars up to the county commissioners in Ohio and say: "Here, if you will issue bonds and borrow money, we will give you these two dollars; make you a present of them"; and the people of Ohio have already paid the two dollars, and more.

Over in Ohio they have assessed folks, until the last session of the legislature, as high as thirty-three per cent for the cost of a road that goes past the farm, and after the road was built a farmer could not raise a bushel more of wheat or anything else.

Our road bonds are issued by the counties, and are outside of the limitations. The road business has got Ohio into as much trouble as the school business. The road is a public utility, and I should like to ask the gentleman who made that report if there were any surveys made of roads to be built. There have been no surveys made in Ohio, except for political purposes. I do not know whether that is the case in other states. The road is a public utility. If the traffic will not take care of a road as a public utility, the road ought to be junked.

MR. CONVERSE (of North Dakota): As a member of the committee, I might say in response to the point made by the gentleman from St. Louis, first with reference to the heavy truck: I think when you come to read the report you will find that the report takes the position that he takes; that there should be a regulation of the size of the trucks that use the roads. That is mentioned in the report as an important factor in the deterioration of the roads.

With reference to the gasoline tax in cities, you will realize that a report of this kind cannot possibly cover every situation. Although it is not discussed by the committee, and I do not assume to speak for the committee, it is possible that there should be exceptions in the law where motor buses, such as those here in St. Louis, do not go off the city streets at all—exceptions to the gasoline tax.

With that much said, I want to say this also, that it has been a pleasure to serve on this committee; it has been a pleasure, because of the character of the men with whom I have been associated. It has been not only an able committee, but its members have been fair-minded. Men on that committee who occupy a different position from what I do, as a public official, and who might be expected to have their views colored by their personal interests, have risen above their personal interests, and have considered the matter from the standpoint of good citizenship; they have placed good citizenship first, and have subjected any personal bias they might have to the public interest, and have been fair-minded at all times in the preparation of this report.

Not only has it been a pleasure to be associated with men who are able and fair-minded, but also with men who are very willing. It was one of the most willing committees upon which I ever worked. The chairman was willing to do nearly all the work, and the rest of the committee was willing to let him do it.

CHAIRMAN LORD: Any further remarks?

MR. PHILIP ZOERCHER: With due respect to all, I think the last people on earth that ought to object to this report are the people in the business this man is in, the motor bus people.

There is a street car company running here in the City of St. Louis, as they do in the City of Indianapolis. They build their own tracks and are assessed in the City of Indianapolis at fifty thousand dollars a mile; and the motor bus comes along and uses the road that was built by the people, pays nothing, and the only thing they pay now is this gasoline tax. They are the last people on earth that ought to object to this report; they ought to fall in line, because if they do not, they had better beware of the wrath that is to come.

MR. MEADE: May I say a word appropriate to what this gentleman has said? We have had some discussion of that here in St. Louis, and I have pointed out that on a properly constructed street, which will carry any heavy motor traffic, a motor bus, such as we use, does absolutely no damage. The amount that we pay, if it were used as interest and sinking-fund on the issue of bonds, would make this city in a few years the best paved city in the United States. The motor bus does not occupy the physical portion of the

street in any way, it does not obstruct the street. The street railway occupies the physical part of the street. When it lays its tracks, the street is torn up for weeks or months, and all traffic is blocked. When it lays its rails in the street, the vibration of its cars causes constant destruction of the pavement next to the tracks, and yet they are always complaining of having to do that paving. They erect their poles on the side of the streets; they cross the streets with wires; have all sorts of other structures. Even in their operation they are destructive; when they stop, all other traffic has to stop behind them; they stop to refuel their stoves; stop to recharge their cars with air; it is absolutely proper that they should pay the tax.

As a matter of fact, comparing the franchise taxes paid by the street railway and the franchise taxes paid by the motor bus company, they are quite equal. The street railway, of course, has large amounts of property, and they pay on it in proportion, as everyone else does; so does the motor bus company. Fortunately, it does not have to use anything like as much property as the street railway, to accomplish the same purpose.

I want to say that in the State of New York there is an exception, such as the member of the committee spoke of, where motor buses operating under franchises, are not required to pay the same license fees as other omnibuses operating over state roads. In Massachusetts I am under the impression that the law provides that the proceeds of the gasoline tax shall be segregated according to the number of registrations from the cities, as against those from the state. If I am mistaken on that I should like to be corrected.

MR. LONG (of Massachusetts): We have no gasoline tax as yet in Massachusetts.

MR. MEADE: Was it not placed on referendum?

MR. LONG: Yes, but fifty per cent goes to counties and towns and fifty per cent to the state.

MR. MEADE: That would be a fair arrangement.

MR. BROSSEAU: I am not a bus operator, but I manufacture trucks and busses, and I have some knowledge of the situation. I just happen to have with me a copy of an address that I have been asked to make at the American Electric Railway Association, which represents all of the electric traction companies, and incidentally some of them operate busses. It represents the attitude of the automobile industry, and I will read briefly from it.

I believe the bus should be regulated as any other public utility. I do not think the bus should be relieved of taxation, because it is a new agency. All agencies of transportation should contribute to the cost of the government.

In California busses are taxed on their gross earnings, as the railroads and trolleys are taxed. In the State of California there is a recent law putting the common carrier and the motor bus in exactly the same category as the electric line and railroad with respect to taxation.

I do not ask for special favors to the bus. It will rise and fall on its own merits, and not because of special privilege. It should be granted no better and no worse treatment than is accorded to other forms of transportation.

I might say quite a bit more, but I think perhaps that will give you a fair idea of the attitude of our industry, and I believe that it will meet with the support and with the approval of the vast majority of the people who operate motor busses or motor trucks for hire.

It is, of course, to my mind entirely out of the question for an agency making use of facilities that are furnished to it, not to be perfectly willing to contribute for the use of those facilities in a fair and reasonable manner. I thank you.

CHAIRMAN LORD: We will next listen to the paper written by Mr. Beall, secretary of the New Mexico Tax Commission, on "The Control of Expenditures in New Mexico." The paper will be read by Mr. Asplund, and, I understand, will consume somewhere in the neighborhood of ten or fifteen minutes. After that paper is read, if the members are willing to remain, we shall hear the resolutions prepared by the committee on resolutions. If we cannot go any further than to have the resolutions read tonight, it will be worth while, but if we could have them also discussed, it would make possible the adjournment of the conference and the association by noon tomorrow.

MR. R. S. ASPLUND: Mr. Chairman, Ladies and Gentlemen: I expect to give you a summary of what Mr. Beall would have read to you if he had been here, in a very few minutes, because we feel that that group of subjects which deals with control of expenditures has been pretty thoroughly threshed over in this conference.

New Mexico has not, perhaps, a great deal to offer that is new, with reference to the control of expenditures, except that we go a good deal farther than any other state in the Union, I think, in the matter of controlling local budgets and expenditures under such budgets.

Our State Tax Commission, of which Mr. Saint is chief, has complete control over all local budgets of every taxing unit in the state. They have the power of reviewing and revising, increasing or diminishing items, and approving or disapproving, making such changes as they may see fit. We have been able to get away with it for the last three or four years, because the tax commission has

exercised its authority and its power with considerable discretion. They do not act, as I understand they do in Indiana, on appeal. They do, however, give ample opportunity for protest as to their final action. A copy of the budget, when finally approved by the State Tax Commission, is placed in the hands of the state comptroller. The state comptroller in New Mexico controls all local expenditures, as well as state expenditures, whether those expenditures be by the county or by the cities or by any other spending agency. The comptroller has this budget in his possession, and when his auditors go to the various localities, they take that budget with them and check the expenditures against that budget.

We have a maximum limitation for all purposes. Then we have another limitation, which restricts the levy to five per cent over the preceding year, excepting that an increase over that may be permitted by the State Tax Commission.

We have, as I said, a rigid budget system, and all these limitations. We have what is known in our state as the Bateman law, which has been on our statute books for some time. That makes any obligation null and void that will increase the expenditures over the revenues for any year; so that we feel that the taxpayer, so long as we can properly exercise the machinery provided, is protected against illegal or excessive expenditures.

Now, I do not mean to say that we do not have a good deal of confusion in our local finances, but that confusion under this system is becoming less and less each year. Those of you who read the *National Tax Bulletin* will have read in an issue of a month or two ago an article on this subject of controlling expenditures in New Mexico, where our system is briefly outlined.

Perhaps this is all the time that I should take to attempt to set forth what Mr. Beall would have said at greater length had he been here at the proper time. We expect to make a fuller exposition of this at the national tax conference which we fully expect will be held in Santa Fe next year. At that time we shall tell you about the advantages of living in New Mexico, as well as the disadvantages and the difficulties under which we labor. I thank you.

CHAIRMAN LORD: A very interesting statement. Did Mr. Beall prepare a paper or did he expect to speak extemporaneously on the subject?

MR. ASPLUND: Mr. Chairman, I am not prepared to say whether he did or not. Mr. Saint informed me that I was to say as well as I could what Mr. Beall had in his mind.

CHAIRMAN LORD: We have now a fair attendance of the conference, probably a better attendance than we shall have tomorrow morning, and it seems to me that unless there be objection, this is a good time for the committee on resolutions to present its report.

Mr. Gary (of Virginia):

To the Conference:

Your committee on resolutions, through its sub-committee and the full committee, have had various meetings and considered the respective resolutions sent to it by the conference and begs leave to report for consideration and adoption the following resolutions:

Resolved that the thanks of this conference are extended to:

Honorable Arthur M. Hyde, Governor of the State of Missouri.

Honorable Henry W. Kiel, Mayor of St. Louis.

Roy H. Monier, State Tax Commissioner.

George M. Hagee, Former Member of the commission.

St. Louis Convention and Publicity Bureau.

Miss Anna Dill, Miss Grace Cleary, Mr. S. J. Bear, and the members of the conference who have cooperated so kindly in connection with the conference details.

The Press and all others to whose efforts, exerted in too many ways to record, the success of the conference and the pleasure of the delegates and their friends are attributable.

Be it Resolved, that this conference approve and commend the *Bulletin* of the National Tax Association and again express its appreciation of and thanks for the valuable services and contributions of our esteemed secretary, Alfred E. Holcomb, to the problems of taxation in this country.

Dr. Page: May I ask whether these resolutions are merely to be read tonight, or are they to be considered for adoption at this meeting? If they are to be considered for adoption, I think we ought to consider them as they come up, *seriatim*.

Mr. Gary: I move the adoption of the two resolutions that have now been read.

Chairman Lord: I think the suggestion is timely, and in any event I think we may pass upon these resolutions without serious trouble.

Dr. Page: I merely ask for information, whether we are merely to hear the resolutions now, or whether we are to consider them for adoption.

Chairman Lord: Unless there is objection, I do not know why they may not be threshed out tonight, as well as any other time. We probably have a better attendance now than we shall have later. I do not think it will worry any of you to remain up.

Dr. Page: I move the adoption of the resolutions which have been read by the secretary of the resolutions committee.

(Motion duly seconded)

CHAIRMAN LORD: Moved and seconded that the resolutions just read by the secretary of the committee be adopted. Are you ready for the question?

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: Unanimously carried; adopted.

MR. GARY (reading):

BE IT RESOLVED, That this conference hereby recommends to the National Tax Association that it continue the consideration of the question of public expenditures and that it appoint a committee to determine the advisability of the association undertaking an investigation, the scope which such an investigation should assume, if undertaken, the methods which should be employed and the manner in which the investigation should be financed; that such committee be authorized to hold such meetings as may be necessary to work out a definite policy on this important question; and that it be requested to submit its recommendations at the next annual conference.

MR. LINK (of Colorado): I move the adoption of the resolution.

(Motion duly seconded)

CHAIRMAN LORD: Moved and seconded that the resolution just read be adopted. Are you ready for the question?

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: It is unanimously adopted.

MR. GARY (reading):

WHEREAS, it is generally recognized that the general property tax as now administered is unsuited to the taxation of privately owned forest property operated for continuous production; and

WHEREAS, in view of our rapidly dwindling forest resources and the increasing need of such resources, it is of utmost importance that changes be made in methods of taxation which will permit the development of forests under private ownership; and

WHEREAS, all attempts thus far to solve this problem have arrived either at the displacement of the general property tax on growing forests or such modifications thereof as would probably require constitutional changes to permit their enactment; and

WHEREAS, no concerted effort has yet been made to refine or improve the general property tax, under existing constitutional limitations, in its application to this class of property; therefore,

BE IT RESOLVED, that the conference requests the National Tax Association to appoint a committee to consider and to report at the next annual conference such methods of refining and standardizing the assessments of growing forest property as, pending the adoption of other tax remedies, will permit private owners to undertake the development of such property.

MR. ZOERCHER (of Indiana): I move the adoption of the resolution.

MR. ASPLUND (of New Mexico): I second the motion.

CHAIRMAN LORD: Moved and seconded that the resolution just read be adopted. Are you ready for the question?

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: Unanimously adopted.

MR. GARY (reading):

WHEREAS, We recognize the educational force and permanence of early impressions in shaping the thought, and directing the action of our citizens; and

WHEREAS, Experience has demonstrated that one of the obstacles to promoting the adoption of sound taxation policies is the want of an adequate appreciation of the essential community benefits which accrue, and the need of more general information regarding the principles of sound taxation methods; and

WHEREAS, We believe that sound taxation methods would be promoted by teaching the principles thereof in the schools of our country;

NOW THEREFORE, BE IT RESOLVED, That we recommend to the National Tax Association the appointment of a committee to prepare a brief symposium of the basic principles governing the purposes and the science of taxation, and report the same to the next conference.

CHAIRMAN LORD: You have heard the reading of the resolution; what will you do with it?

MRS. WENDT: Will that be published in book form for use by school boards?

MR. ASPLUND (of New Mexico): I move its adoption.

MR. GARY: Mr. Chairman, I should like to say, and I probably should have made the statement before, that the chairman of the committee was unfortunately obliged to leave the city today, and I am merely reading the resolutions as secretary of the committee. I am sorry the chairman has gone.

Mr. Coody (of Mississippi): I was a member of the resolutions committee and raised the same question which the lady has raised here. The resolution was slightly changed, so it is merely a resolution providing for the appointment of a committee to prepare this symposium of tax laws, to be submitted at the next session of the conference; it does not provide for the publication of a book or the placing of a book in the hands of anybody, and I can see no possible objection to this going through.

Mr. Link (of Colorado): I should like to explain to members of the conference that this resolution has been a hobby of our good member, Senator Van Alstine of Iowa, for a number of years.

Dr. Page: Far be it from me to oppose anything that Senator Van Alstine approves, but from what has been said by the gentleman from Mississippi on the question that has been asked by the lady from Wisconsin, I question very much the expediency of recommending to the tax association that they shall appoint a committee to do something that may not be used, because to do that work will require a great deal of labor. I doubt very much whether the senator and those who are in favor of teaching taxation in the schools have much conception of what labor it means to get such a symposium as that prepared, in such a way as to make it of any value to schools and those in charge of teaching the children of the schools.

Personally, I have been engaged in the work of trying to teach for some thirty-five years. I am one of those who doubt the possibility of giving to the school children very much real knowledge of the science of taxation, or very much of the real facts with regard to taxation, in such a way as to prepare them to pass judgment upon the problems that come up. I doubt very much if that is the best way for us to try to prepare the people to pass on these problems. I should hate very much to see the tax association permit the appointment of committees who are to do a work which will be merely perfunctory or which will be more or less useless and meaningless, and ask the committee to take the thing seriously and try to get up a symposium of that kind, which will pretend to be what it will be extremely difficult to make it.

I have no objection to all earnest efforts being made to teach the principles of taxation and to give some idea of the problems of taxation in the right way, but I do not believe that this is a problem and function for the tax association to assume.

I shall not object to the adoption of the resolution if the members of this conference want to adopt it, but I should like merely to call their attention to the seriousness of the work which it is proposed to ask of them, and to ask them to think just a little bit before they vote on this thing, and not vote in purely a perfunc-

tory way, as if they had to approve any resolution brought forward. With apology for having said anything at all, I shall take my seat.

SECRETARY HOLCOMB: Out of respect for Senator Van Alstine, I think perhaps I ought to read his letter, which shows more clearly what he had in mind. He writes this letter, which reached me after I arrived in St. Louis:

"GILMORE CITY, IOWA,
SEPTEMBER 13, 1924.

DEAR MR. HOLCOMB:

I regret to inform you that I do not now see how I can attend your meeting this year on account of being on the program of the annual convention of the Farm Mortgage Bankers Association of America which is held at Omaha next week. This will be the first conference that I have failed to attend since I started a few years ago and I hope to again be with you next year.

You will perhaps recall that at the White Sulphur Springs conference I offered an educational resolution, and I would very much like to have that considered this year if possible. My experience in the Iowa Tax Commission has impressed upon me the need of a broader information among the average voters of the fundamental principles of taxation. While this resolution is looking to the future, we should keep in mind the fact that the eleven year old child of today will be a voter in ten years and his vote will contribute to the policies of his time.

The average individual seems to have a vague impression that taxes are a sort of penalty imposed upon our citizenship. They do not fully realize that the tax receipt might be properly regarded as the hall-mark of civilization, and that any people or community which does not collect taxes with which to purchase the social advantages which really stand for civilization, are those primitive peoples who are barely emerging from barbarism. We all recognize the educational force of early impressions, and if the principles of sound taxation policies could be impressed upon the minds of our children at an early age, those impressions would contribute to a more rational consideration of taxation issues.

I enclose a resolution which I wish you would have presented in proper form and will be interested to have your report on the attitude and action of our conference.

With personal regards and again expressing my regret that I cannot be with you, I remain

Yours very truly,

H. S. VAN ALSTINE."

SECRETARY HOLCOMB: It strikes me that the senator's ideas are very important and very valuable. I am somewhat inclined to agree with Dr. Page that we are going a little farther than is necessary to carry out the wishes and purposes of the senator. Perhaps he would be entirely satisfied if we should accomplish the purpose of his resolution by merely passing one urging a more definite inclusion or study of taxation in the public schools of the country. I merely offer that as a suggestion.

MR. CONVERSE: Another thing occurs to me. We have just adopted a resolution providing for, or asking the association to provide for a committee to outline a course of investigation on public expenditures and related subjects. I presume it is the thought of those who drafted that resolution—I inferred so from what President Bailey said this afternoon—that this committee will have to determine upon the scope of the investigation.

There is no one who wants the subject of citizenship taught in the schools more than I do, in fact, it is a hobby of mine. If I were running a college, I should not issue a diploma to any one who had not taken a required course dealing with subjects that have a direct bearing upon the problems of citizenship.

Now, I am wondering whether this committee that is going into the subject of expenditures may not possibly see fit to recommend back to this conference next year that a study be made of the problem of educating the public, both the youthful public and the older public, in the facts of taxation, and whether this resolution might not appropriately be referred to that committee.

MR. W. R. BRADLEY: Mr. Chairman, I am heartily in favor of this propaganda, for the reason that the average citizen out in the states, feels that he is being done. That is his attitude. He feels that he is being imposed upon, and that feeling comes from a lack of education along these lines. If he had been taught it in school and had been brought up with it, he would feel differently, and the attitude of the public today toward taxation would be far different from what it is. They do not realize the benefits they get from taxation; they think somebody else has done these things, and that in the nature of things they get good roads and good schools, and many adults do not know the machinery that is built to carry out all these governmental problems. If we can get it into the schools, I think it would be a great benefit to all the states.

MR. VAUGHAN: While in accord with what has been brought forward, I want to call your attention to one thing. I doubt the wisdom of acting upon this resolution at this time for two reasons: the first is, it seems to be directed to an educational campaign for the benefit of the youth, and my impression is that the youth at the present time have splendid opportunities for learning about taxation in the cities. There is literature extant that is being used in the public schools and colleges. I recall books by Dr. Bullock and Professor Seligman, Professor Hunter, Dr. Plehn, and others. I do not recall right now any finer books on the subject of taxation, and they are used to a large extent in the colleges and universities. What we need more than anything right now is a campaign of education for the older set of taxpayers who did not have the opportunity of these textbooks when they were in their training.

I think we ought to have a little better machinery for the publicity of our own operations. The printed volumes of the proceedings of this association are a veritable mine of information on all problems of taxation, and in most cases I dare say they are sitting back on the shelves, and are not used. The public ought to know about them; there is a large amount of waste labor there.

If we gradually evolve a system to provide for making more accessible to the public what has already been said and done with regard to taxation, we shall contribute a valuable aid towards general education along those lines. We ought not to think of the subject of taxation in too narrow a way; it is a branch of political economy and political science, and those topics are pretty adequately treated, and I doubt the wisdom of emphasizing the narrow subject of taxation apart from the general subject. I think the motion at present is rather premature, and I would not favor it.

Professor Hunter (of Illinois): As a matter of information, I think most of us ought to take our hats off to Iowa, because I think Iowa is one state that requires the teaching of the principles of economics in the high schools. I rather question the wisdom of trying to teach much on the principles of taxation until you have a little background for it. After all, the principles of taxation are the principles of economics, and so when you talk about giving the principles of taxation in the public schools, it cannot be done. That is all there is to it. There is too much. It is too deep; and, in the second place, our high schools and public schools are too crowded now. You could not get it in if you wanted to.

As a matter of information, especially if this committee is authorized, I saw it announced not very long ago, and I cannot tell you where — I may be able to find it — somebody is writing a public finance for high schools. If they do that, the committee would not have anything to do.

Mr. Sutherland (of Illinois): Mr. Chairman, it just occurred to me if it were considered desirable to pass this resolution in any form tonight, we could rather follow the form that we have set for the study of public finance, not to try to consider a thing of this kind, which will be such a job, except merely to say: Resolved, that the National Tax Association be requested to appoint a committee to investigate the practicability and desirability of putting the subject of the principles of taxation in understandable form, in the upper years of the public school, or something of that sort. It seems to me that is as far as we should go. If you desire to go that far, I would offer such an amendment to the resolution.

Mr. Zoercher (of Indiana): It seems that the author of this resolution is not present, and from the expressions of the members here, they are reluctant to pass upon it. I move that this resolu-

tion just read be continued for further consideration at the next annual conference.

CHAIRMAN LORD: Laid on the table for that purpose?

MR. ZOERCHER: That this resolution be not adopted at this time, but be laid over, for consideration at the next annual conference.

(Motion duly seconded)

SECRETARY HOLCOMB: I was about to attempt to draw something that might possibly meet something of Senator Van Alstine's view. I have the following:

> WHEREAS, this conference is impressed with the perfunctory character of the attention given to the subject of taxation in the public educational institutions of our country and desires to express itself in favor of more definite, distinct and widespread study of the principles of taxation in the elementary schools; therefore,
>
> RESOLVED, that the National Tax Association be requested to appoint a committee to consider the feasibility of accomplishing this and of devising ways and means whereby the purposes of this resolution may be carried into effect.

MR. CONVERSE: I move the amendment of the pending resolution to read as covered by Mr. Holcomb.

MR. SUTHERLAND: Motion seconded.

CHAIRMAN LORD: Moved and seconded that the resolution be amended to read substantially as presented by the secretary. Are there any remarks?

(Ayes and Noes)

CHAIRMAN LORD: The ayes have it. Now, we need to adopt the resolution as amended.

MR. CONVERSE (of North Dakota): I move the adoption of the resolution as amended.

CHAIRMAN LORD: It is moved that the resolution as amended be adopted. Any remarks?

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: It is unanimously adopted.

MR. GARY (reading):

WHEREAS, The recent act of Congress increasing the rates of the federal estate tax will materially affect the revenue of the several states derived from the taxation of inheritances; and,

WHEREAS, The laws and administrative practices of the various states and the Federal Government have resulted in frequent duplications of the burden and great inequality in the distribution of the burden among the citizens of the several states; and,

WHEREAS, In the opinion of this conference, the time has arrived for the several states to take counsel among themselves and with the Federal Government, with respect to the problems of inheritance and estate taxation, to the end that existing evils may be corrected;

NOW THEREFORE, BE IT RESOLVED, That this conference recommends that the National Tax Association, through its officers or an appropriate committee, take such steps as may be necessary to bring about a conference of properly qualified representatives of the state and federal governments, and take such other action as it may deem advisable to further the purposes of this resolution.

CHAIRMAN LORD: You have heard the resolution; what will you do with it?

MR. PHILIP ZOERCHER (of Indiana): I move the adoption of the resolution.

MR. MILLER: Seconded.

CHAIRMAN LORD: Moved and seconded that the resolution as read be adopted. Are there any remarks?

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: The resolution is unanimously adopted.

MR. GARY (reading):

WHEREAS, In all the states of the Union wherein any of the Indian Tribes or Indians, whose properties are in anywise under the control or supervision of the Department of the Interior of the Federal Government, are located, the courts of last resort have ruled that not only the property of such Indians is immune from state taxation, but all mineral products and oil and gas belonging to lessees of such Indians' properties are likewise immune from taxation; and,

WHEREAS, It is a matter of common knowledge that the price paid the Indian for leases on such properties is in no wise affected by the question of taxation; and,

WHEREAS, He derives no benefit from such immunity, but on the other hand great hardship and inequality on the remainder of the taxpaying public is endured; and,

WHEREAS, The development of some of the newer states of the Union is being greatly retarded by large amounts of the wealth and valuable property thus enjoying freedom from taxation;

NOW THEREFORE, BE IT RESOLVED, That it is the sense of this conference that the Congress of the United States, at the next session thereof, should pass a law subjecting such property in the hands of lessees of said Indians to state taxation as was done by Act of Congress of March 3, 1921 (41 Stat. 1249), which related to oil and gas production in the Osage Nation located in the State of Oklahoma.

CHAIRMAN LORD: I assume that the basic facts set forth in this resolution have been carefully investigated by the committee on resolutions. What will you do with the resolution?

MR. COODY (of Mississippi): We had a similar resolution at the morning session, which we reported adversely. I did not attend the afternoon session of the resolutions committee. I should like to have some explanation of the change in the resolution.

MR. GARY: Mr. Chairman, I would like to state that at the afternoon session—

DR. PAGE: I rise to a point of order.

CHAIRMAN LORD: State the point of order.

DR. PAGE: The resolution states that it is the consensus of the conference that this resolution be passed. I have been in pretty constant attendance upon the meetings of the conference, but as yet I do not know that the facts relating to this resolution have been set forth in the conference, and I must admit that as far as I am concerned, I have not heard any discussion regarding it. The point of order relates to this: Are we really justified in considering for adoption a resolution which is presented to us when there has been, as far as I know, no discussion of it? I am asking for information now. Have there been previous meetings of the tax association at our former conferences where there has been a discussion of this rather highly technical matter?

MR. GARY: I might state in answer to Dr. Page, and also to the gentleman from Mississippi, that there were no discussions on the floor with reference to this resolution. The matter was considered at the morning session of the resolutions committee, and the committee recommended that it be not reported out. At the afternoon session, however, there was a motion to reconsider, and the committee reconsidered its action and voted the resolution out at that meeting.

DR. PAGE: Mr. Chairman, I am insisting on my point of order, but I do so, not because I have any opposition to make to this proposition, because I know nothing about it, but the point of order is this; that we cannot pass a resolution dealing with a thing with which we are altogether and entirely unfamiliar. I do not see how

the conference can commit the National Tax Association to a resolution dealing with a matter so important and so highly technical, and which apparently is very closely and intimately related to federal policy with regard to Indian affairs, when there has been no discussion or debate on it, to familiarize the members of the National Tax Association or those who have been in attendance on the conference with the facts on it.

CHAIRMAN LORD: I shall have to rule, Dr. Page, that the resolution is in order. As to the wisdom of adopting it, that is now up to this conference.

MR. KING (of Oklahoma): I move the adoption of the resolution.

CHAIRMAN LORD: Is there a second to the motion?

MR. ZOERCHER: Seconded.

MR. MCPHERSON (of Georgia): I move as a substitute that the motion be laid on the table.

MR. MUELLER (of Minnesota): Second the motion.

MR. MCPHERSON of Georgia): I move as a substitute, that the National Tax Association to take up at this time.

DR. PAGE: I want to say that it puts me in an embarrassing position, and I am pretty sure a number of the gentlemen present will sympathize with me, on the attitude of opposing this matter as a resolution of the conference. When we review the facts we shall probably think of it very highly. I do not want to seem to be opposing or objecting to something which the gentleman from Oklahoma and the gentleman from Indiana approve of, but I cannot vote to commit the National Tax Association to a proposition in regard to policy, on a matter I do not know anything about, and therefore if this resolution is offered, I wish to vote against it, and I shall expect all those other gentlemen present who are in a state of equally deplorable ignorance in regard to a matter of this kind, likewise to vote against it.

CHAIRMAN LORD: As a substitute for Mr. King's motion, it has been moved that this resolution be laid on the table. Are there any remarks on that?

MR. KING (of Oklahoma): Mr. Chairman and Gentlemen of the conference: In the State of Oklahoma and certain other states there are located large areas of land owned by Indians, who are under restriction of the Federal Government. This land, belonging to the Indians, is of course exempt from taxation, and perhaps should be. In Okahoma it happens that a large portion of the oil production within that state lies in the counties where the greatest portion of the land is restricted—Indian lands. In addition to that,

the largest lead and zinc producing territory is in the Choctaw Nation or Reservation, and is almost wholly restricted; that is, the leases on such lands must be approved by the Department of the Interior, and the fee in the land may not be ultimately sold by the Indian without approval of the Interior Department. The lessees, the oil companies or the individual oil operator, who lease this Indian land and develop an oil industry thereon, have been held to constitute a federal instrumentality, and the Supreme Court of the United States has held, as to the gross production tax and also the net income tax levied by the state, that they may not collect either tax or any tax from the lessee on his portion, even after it is separated, and entirely apart from the royalty going to the Indian. That is on this theory, that if the property of the lessee of the Indian were taxed, the Indian would perforce receive a less consideration for the lease, and the fortune of the Indian would thereby be burdened by the tax, and he being a ward of the Federal Government, it would likewise burden the Federal Government in carrying out its duty to the Indian.

If you understood this resolution, it would not be killed, but everyone familiar with the oil industry or mining industry of any sort is well aware that the only consideration moving a purchaser of a tract of land or a lease on a tract of land, for the purpose of drilling an oil well, is the oil expectancy, and not whether or not that land or that production will be taxable or not taxable.

I am an oil operator. I lease a tract of land from an Indian under restriction. I pay that Indian one-eighth of the production. I lease alongside of that a tract of land from an unrestricted Indian; I pay that Indian one-eighth royalty. I produce four million dollars worth of production on each of the tracts; on the unrestricted tract I pay the State of Oklahoma $120,000 in taxes—the three per cent gross production tax; on the restricted Indian production of four million dollars I do not pay the State of Oklahoma one cent of tax. The Indians fare exactly alike, each receives identically the same in the original purchase, and in the continuing royalty.

Now, gentlemen, if you please, this is not a local question. Every state in the Union belongs to this tax conference. Any subject of taxation which affects an entire state is not a local question. If it affected only some county in the state, it might be. Each member of this association, speaking in terms of states, is entitled to have its tax problems considered by this body.

It was not the intention to have the resolution voted and passed without the conference being informed as to the reasons for its introduction. It uses the familiar language "It is the consensus of the conference," which, of course, necessarily implies after discussion and thorough understanding.

For a great many years the gross production tax was paid by all parties in the State of Oklahoma. Some representatives of some of the oil producers conceived the idea that by virtue of the holding of the Supreme Court of the United States, a state could not tax an instrumentality of the Federal Government, they might so hold as to taxing the lessees of the Indians. A decision was rendered by the Supreme Court of the United States, reversing the state supreme court on the question, holding that the gross production tax of three per cent, derived by a white lessee, as to his divided share, could not be taxed, because it was—

MR. VAUGHAN: Case, please.

MR. KING: The first case on that is Choctaw, Oklahoma & Gulf Railroad Co. vs. Harrison, 235 U. S. 292.

MR. VAUGHAN: The other was the Wolverine, wasn't it?

MR. KING: Yes; they are companion cases. Following that decision a suit was brought by Frank Gillespie of Tulsa, Oklahoma, in which the State Auditor was sought to be enjoined from collecting the state income tax, which is a net income tax. Following the doctrine in the Pollock case, the supreme court held that the tax could not be collected from the lessee's net income, in so far as the same was contributed to from those sources. [*Gillespie* v. *Oklahoma,* 257 U. S. 501.]

Recognizing the injustice of the situation, that merely by virtue of a fortuitous circumstance, you holding a lease that is restricted, under similar conditions that you would hold an unrestricted one, you pay no tax, and recognizing the effect on the school districts or localities wherein all of the property is virtually of that nature, when Congress extended the period of trust for the Osage Nation for twenty-five years longer, by the Act cited in the resolution it was provided that the production of oil and gas from that area be subject to the state tax of three per cent on the oil and gas produced.

MR. VAUGHAN: Was the validity of that act ever tested?

MR. KING (of Oklahoma): The validity of that act has never been tested, and I do not think it will be, because Congress has as much power to give its consent that that be taxed as it has to give its consent that the shares of a national bank may be taxed, which it has done, as you all know, the same as other moneyed capital employed in the taxing district.

Oklahoma is the state that would be most favorably affected by this resolution; and, in addition to that, the resolution presents a real principle of taxation. The correct principle involved is this; no state should have the right to hamper the Federal Government by taxing any of its instrumentalities, any more than the Federal

Government has the right to hamper the arm of a state by a tax. But where a tax does not have that effect, even remotely, that principle of exemption should not obtain, and Congress has taken the first step and has recognized this principle and has permitted the taxation of the gross production from the entire Osage Nation in Oklahoma, which consists of Osage county. The Seminole and Crete Nations are situated identically the same, as far as the unrestricted Indians of that tribe are concerned.

As I stated, practically all of the lead and zinc production is under the same handicap.

Now, this resolution merely expresses the sense of this conference that similar legislation should be had, requiring the lessees, or the oil company, or the oil operator, if you please, interested in this production, to pay the same tax that the other property of a like character pays in the same district.

MR. VAUGHAN: It does not affect the Indian?

MR. KING: It does not affect the Indian at all. We recognize that we could not tax the Indian's property if we tried, and there is no effort here or no intention to seek even to impose that tax. It has been suggested that the legislature of the states interested would be the logical place to take this matter up. That is quite true, waiving political considerations. When we consider the expense covered by this and the political influence wielded, you must realize that a thing of this sort must have disinterested consideration, and the real merits of the proposition must be presented, aside from political consideration, in order to get fair treatment. With such a resolution, then, it will not be difficult to take the matter before the legislature and before Congress and obtain similar legislation.

The justice of the resolution is not even questioned by anyone familiar with the subject; even the attorneys of the oil companies will all admit that the thing is right; they do not, of course, want it done, but there appears to me to be no valid argument that may be directed against the question involved. If there is any question of propriety as to this association acting on the matter, that presents a different phase, but I do not think there is a question of impropriety connected with the matter, because anything that affects the entire revenues of a state, I think, is a proper matter for consideration by this body.

MR. LINK (of Colorado): When this resolution was first presented to the sub-committee and later on to the general committee, it struck us practically all as it did Dr. Page. After some consideration the sub-committee first decided to recommend the principle of the resolution, then this morning the general committee, after further consideration, decided to persuade Mr. King of Oklahoma

to rest upon the commitments of this association, to wit, that the association is well committed against exemptions and immunities of wealth within a state. He suggested that it was of such vital importance to his state, that later on it was opened up again and adopted. So the committee was pretty well advised, and we considered it very carefully.

I wish to say that one or two points have occurred to me from my own study, that Mr. King has not covered. We are just recently opening up oil wells in Colorado, so we are not so familiar with this, but we are, as you all know, quite familiar with metal mining, and here is the vital difference between that and all other wealth, and it is pretty true of oil, and that is, it is a rapidly exhausting wealth. There is just so much in the ground, and that is rapidly taken out. That is more particularly true of oil. Oil flows out rapidly, by the millions of barrels. Oklahoma is losing hundreds of thousands of dollars. There is no earthly show of getting that back; so there is an urgent situation for Oklahoma. So, considering all of those situations and acting well within the principles of this association, the committee decided to adopt the resolution, and I hope the association will back us up, not only on account of Oklahoma, but it does apply to other states; and I might say, Mr. Chairman, in digressing, that you are all familiar with the notoriety of oil leases within the last few years.

I am a little proud to say that in northwestern Colorado in just recent months a leasing company under lease contract from the Government opened up a 4500-barrel well, which, as you know, is considerable of an oil well, which has now settled down to a steady flow of 2300 barrels. Now, the question came up to us a few days ago in Colorado as to that wealth being taxable. The tax commission ruled that it was in a broad way, although there is very serious doubt about it.

Now, we all agree that wealth should be taxed, and if it is not taxable under all Indian and other laws, we certainly should fix it so that the states can get their fair tax out of it.

Mr. Zoercher: Mr. Chairman, I want to say that this morning I voted to table this resolution. During the noon hour the gentleman from Oklahoma explained the matter to me, which was not explained at the morning session, and after he explained it to me I realized that a mistake had been made, and made a motion, I having voted on the prevailing side, to reconsider, and that was seconded by one who also voted on the prevailing side—the gentleman from South Carolina, Mr. Query—and we discussed the matter fully. We all know that the restricted Indian is a ward of the Government, and that Congress is the proper body to pass legislation on that question, and to me, after we had thoroughly discussed

it, there was only one side to the question. There were not any two sides.

As the gentleman has said, here are two leases: one made with a free Indian and the other with a restricted Indian, each of which produced four millions of dollars output. The Indians in both cases get the same amount, one-eighth, which you all know is the general rate or the part given by all lessees, or oil operators. They do that in Indiana, and I suppose that they do it everywhere. One-eighth of the output goes to the owner of the land.

On one of these leases they pay $120,000 taxes to the government, on the other nothing is paid. Who is the beneficiary there? The Indian? No; the oil company, of course, is the beneficiary.

I do not believe this conference wants to be put in the light of endorsing anything like that, to hinder progress in the State of Oklahoma or any other state where they may have that condition. I think that motion ought to prevail, and the conference ought to adopt this resolution.

MR. GARY: May I have a few words to say in this connection? I still recognize the fact that it is both the most popular indoor and outdoor sport to pan all oil companies, and personally, as all of you gentlemen know, I have no connection whatever with oil companies, and I try to the best of my ability to see that they are properly taxed in the State of Virginia. I think there are one or two here tonight who can testify to that fact.

I want to say, however, that the resolutions committee was not unanimous on this proposition. I agree with what my friend Mr. Zoercher says, that there is no one here tonight that wants to record himself as favoring the oil companies in this discussion. It is certain, however, on the other hand, that some of us want to record ourselves as opposing this resolution.

From what information I have, it strikes me as being a fair proposition, but, as has been suggested by Dr. Page, it is a very intricate subject, and I must confess that I do not feel capable of passing on such a question without any consideration whatever.

Now, we have neither Indians—I think we probably have some in Virginia that claim to be Indians, but their right to that claim is even disputed—nor oil, in Virginia, and unfortunately I am not familiar with the conditions which exist in the State of Oklahoma. I have some sympathy, if the conditions are as bad as Mr. King suggests, and I do not dispute what he has to say in the least; but the Supreme Court of the United States has passed on this question. Now, it seems to me that for this conference to set aside lightly a decision of the Supreme Court of the United States, without any consideration or study of the question whatever, is a wrong step. I am vitally interested in the influence of the National Tax Association; it has been a great influence for good in promoting

reforms throughout the United States. Its influence, I think, is attributable practically entirely to the fact that its actions have always been based upon careful study and consideration.

Now, if this association is to be merely a rubber-stamp, to stamp its approval upon every local problem that arises in the United States, then this conference will absolutely lose its influence, and I personally should think that some study of this question by the association might well be undertaken; but for this conference, without any consideration whatever; without any study; without a committee; to pass a resolution of this kind would, in the first place, I feel, not be worth anything. I do not think that Congress would respect it, and I think that it would weaken the association.

Now, some reference has been made to the bank tax situation. I am very familiar with the history of that legislation, and the National Tax Association did record itself on several occasions as in favor of a modification of the federal law, but never until a committee had been appointed and until the matter had been thoroughly threshed out and discussed before the association.

Now, I feel that before this association should attempt to pass on such an intricate question, more study should be given.

Mr. J. P. Derham (of South Carolina): I should like to ask the gentleman who has taken his seat a question, for information. Was the act you referred to in that resolution passed prior or subsequent to the decision of the supreme court?

Mr. Gary: I should like to answer the gentleman by saying that is the very reason I do not care to be recorded on this resolution tonight. I know absolutely nothing about the decision of the Supreme Court of the United States; I never read it. I know absolutely nothing about the act referred to in this paper. I never heard of it before this resolution was presented to the conference. I am always glad to answer any question I can, but, like Dr. Page, I must not only confess that I have no sense in this matter, but I am colossally ignorant on the entire proposition.

Mr. Derham (of South Carolina): If I understand this resolution, it only permits this association to ask Congress to do in certain other cases in the United States just what it has done?

Mr. Gary: I will answer the gentleman this way: The gentleman from Mississippi stated in the committee this morning that they have some Indians in Mississippi, and that treaty rights are involved in this subject. Now, Mr. King referred to some act governing the Indians for thirty-five years. We may get into some treaty conditions here that would make this recommendation appear ludicrous before Congress. I just do not know anything about it, but I understand that some treaty rights are involved.

MR. DERHAM (of South Carolina): I should like you to read this resolution again, because I get this idea, gentlemen, that we are asking Congress to pass an act just pertaining to an act which they have already passed. They passed an act which applies to one county in Oklahoma, and we are asking them to spread that act over the United States. That is what I think.

MR. GARY: You want it read again?

MR. DERHAM: Yes, sir.

(The resolution was thereupon reread by Mr. Gary.)

MR. GARY: I should like to ask Mr. King of Oklahoma a question. One provision of the resolution reads, "Whereas, it is a matter of common knowledge that the price paid the Indians for leases on such property is in nowise affected by the question of taxation." I should like to ask Mr. King if the United States Government did not base its opinion on the fact that the lands were affected, or the lands of the Indians would be affected by taxation.

MR. KING: Yes, they based it on that theory. That was on the theory that if an individual in an ordinary commercial transaction has the option to buy a tract of land, one taxable and another tract not taxable, at the same figure, he will, of course, take the tract not taxable. They did not consider the fact, which is a matter of common knowledge; that when an oil company or an individual undertakes to buy a tract of land for oil or gas purposes, not only the question of taxation is not considered by them, but it does not enter into the price, and they do not know whether that is taxable at the time or not, because, as is common practice, those properties are bought by virtue of their proximity to the oil production, and the original purchase is always made by oil scalpers representing the companies, and the question of taxation is absolutely not in it at all.

MR. GARY: As a matter of fact, when we say it is a matter of common knowledge, aren't we saying that what the United States Supreme Court has said is true, is not true?

MR. KING: Not at all. That was based purely on a theory, and we are merely asking Congress to give its consent to the taxation here in order to remove that. It is not as the gentleman that just spoke has suggested, that it would be a setting aside by this convention of a decision of the supreme court in any particular. It is merely requesting Congress to relieve the legal barrier upon which the Supreme Court rested its decision.

DR. PAGE: Why was that act limited to that county at that time?

MR. KING: Because the only question under consideration there was the Osage trust period, and if any of the other tribes were up for consideration, the same action would be taken.

MR. GARY: When will the trust period expire on these others?

MR. KING: That is indefinite, because it depends upon the competency of the individual Indians.

MR. GARY: Has the question of whether Congress can enact a law of this kind during the pendency of the trust been passed upon?

MR. KING: Oh, yes; that is wholly within the jurisdiction of Congress. This does not affect the Indian.

(Call for the question)

MR. COODY: I raised the question this morning for this reason: quite a number of Indians originally lived in Mississippi and their lands in Mississippi were exchanged for lands in Indian Territory, which is now Oklahoma, and it occurred to me that this proposed taxing of oil from those lands would be invading treaty rights. I now understand the proposed tax does not fall on any part of the oil which goes to the Indians or the proceeds, and therefore could not possibly be an invasion of any treaty rights which existed between the Choctaw Tribe and the United States Government. Having understood that, I withdraw my objections to the resolution and favor its adoption.

(Call for the question)

CHAIRMAN LORD: It has been moved and seconded that as a substitute for the original—

MR. MCPHERSON (of Georgia): I am willing to withdraw the substitute. I thought for the time that the National Tax Association ought not to deal with any matter of local interest.

CHAIRMAN LORD: Does the seconder permit?

MR. WILLIAM MUELLER: I withdraw.

CHAIRMAN LORD: That leaves the original motion to adopt the resolution open.

SECRETARY HOLCOMB: May I make one suggestion. Several persons here referred to this as a matter concerning the National Tax Association. Perhaps they did it inadvertently. There is no reference in the resolution to the National Tax Association; there is no recommendation to the association at all.

MR. GARY: I hope the gentleman will not withdraw his motion, for this reason—I want to say this and then I am through—I believe that there are a great many who would probably like to vote upon this question independently of the matter involved here. Personally I do not want to be recorded as being opposed to the principle of that resolution, and under his motion we would not be

recorded as being opposed to it, whereas if the resolution comes up on its merits I shall have to vote against the merits of it in order to save the question of the National Tax Association passing on it; therefore, I hope the gentleman will not withdraw his motion.

CHAIRMAN LORD: The motion has already been withdrawn.

MR. GARY: I make the motion over again.

(Motion duly seconded)

CHAIRMAN LORD: It has been moved and seconded that as a substitute for the motion to adopt the resolution, that the resolution be laid on the table; are you ready for the question?

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: The Chair is in doubt. All in favor will stand and be counted by the secretary. I may say, in voting upon a question of this kind, only accredited delegates are permitted to vote.

(Rising vote)

MR. MALTBIE: I rise to a point of order. It is my recolection that at the opening session of this conference the rule was adopted that there should be a unit vote by states. I was wondering if we had not better arrange for that.

SECRETARY HOLCOMB: That is not so.

CHAIRMAN LORD: No chance for debate unless it is a point of order.

SECRETARY HOLCOMB: Only delegates appointed by Governors or by colleges may vote on this sort of a resolution.

CHAIRMAN LORD: We can call the motion lost.

MR. ORCUTT (of New York): I was under the impression, as was Mr. Maltbie, that the rules required a roll call by states, states to vote as units. I therefore demand a roll call by states.

SECRETARY HOLCOMB: That is a different thing of course, if you demand a roll call.

CHAIRMAN LORD: I think you are too late. I will rule that it is too late to make that request at this time. It is too late to raise the question. Are you ready to vote on the adoption of the resolution itself? Any remarks?

MR. ORCUTT: I demand a roll call on the question now.

CHAIRMAN LORD: That you have a right to do.

SECRETARY HOLCOMB: That demand must be by three persons representing three different states.

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: The Chair is in doubt. Those in favor will rise and be counted.

SECRETARY HOLCOMB: Only delegates can vote.

(Rising vote)

CHAIRMAN LORD: Now those opposed will be counted.

(Rising vote)

SECRETARY HOLCOMB: 34 for, and 17 opposed.

CHAIRMAN LORD: The majority being in favor of the resolution, the chair declares it to be adopted.

MR. GARY (reading):

"RESOLVED, That the ladies of the conference hereby express their sincere appreciation for the many courtesies extended by the ladies of St. Louis.

While such a resolution might be considered perfunctory, this is by no means the case, but is a sincere recognition of gracious hospitality."

(Duly moved and seconded that the resolution be adopted)

(Ayes and Noes)

CHAIRMAN LORD: Unanimously adopted.

MR. GARY: That ends the report, Mr. Chairman.

MR. ZOERCHER: I move we adjourn to nine o'clock in the morning.

CHAIRMAN LORD: Moved and seconded that the meeting adjourn to nine o'clock tomorrow morning at the Chase Hotel.

ADJOURNMENT

ELEVENTH SESSION

FRIDAY MORNING, SEPTEMBER 19, 1924

DR. THOMAS W. PAGE, presiding.

CHAIRMAN PAGE: The conference will come to order. This is a continuation of the session of the conference from last night. I will ask Mr. Lord to resume the chair.

MR. SAMUEL LORD, presiding.

CHAIRMAN LORD: Ladies and gentlemen, what is your further pleasure?

MR. H. F. WALRADT (of Ohio): I should like to move that the committee, which is headed by Mr. Graves, on standardization of forms, be asked to continue in its work.

(Motion duly seconded)

CHAIRMAN LORD: You have heard the motion; are you ready for the question?

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: It is carried unanimously.
What is your further pleasure?

MR. VAUGHAN: If I am in order, I wish to move to reconsider the action of the conference at the session last night on the resolution, I believe, No. 5. I will state my position frankly. It was a resolution which undertakes to memorialize Congress, or saying it is the sense of this association that Congress should pursue the same action in regard to other tribes as they have in regard to the Osage Indian Tribe, in order to make the interest of lessees taxable.

I am heartily in favor of that principle, and was all through the discussion; but there are two things that caused me to change my mind and to believe it would be better for us to recede from that position. Those two things are these: I have learned that there is total opposition to that movement on the part of members of Congress from Oklahoma. That is news to me. I thought it was a proposition on which they were of one accord in Oklahoma. If we have adopted anything tending to use the slightest influence on

a question of local politics in Oklahoma, we are in a very embarrassing position. I have learned that it is not a good idea to dip into local affairs; let them work them out themselves. I do not say that this is strictly a local matter, but the occasion for its coming up is a local question.

The other and most serious objection I have in mind is that there were only thirty-four votes in favor of the resolution and, I think, seventeen opposed. The vote of thirty-four in an entire conference, where we have nearly four hundred in attendance, would create a false impression and would go counter to the settled traditions of this association, that any matter of policy should be voted on with substantial unanimity.

I think that in large measure, our opinions, or our declarations on points of policy should be almost of the same unanimity as is required of a jury of twelve to try a case; and heretofore, according to my knowledge of the history of our association, we have adhered to that policy. Now, if we go out on this proposition with a vote of thirty-four to seventeen, we depart from that settled rule; and I move you, sir, for a reconsideration by which that vote was taken.

(Motion seconded)

CHAIRMAN LORD: It has been moved and seconded that the vote by which the resolution was adopted be reconsidered. Are there any remarks? Are you ready for the question?

(Ayes and Noes)

CHAIRMAN LORD: The ayes appear to have it, the ayes have it, and the motion to reconsider is adopted.

MR. ZOERCHER: Is Mr. King of Oklahoma here?

(No response)

MR. ZOERCHER: Of course, I dislike to say anything opposed to what the Senator has said, but it seems to me that the members of the conference have had the program laid out, and the details of the sessions; if the members do not want to stay until the end of the session, until the business of this conference is disposed of, that is no fault of those who remain. I have attended, I think, the last five meetings of this conference, and the only time when there was quite a representative body was a year ago, at White Sulphur, when we adopted the resolutions. There seemed to be a pretty good representation at the last conference, but at the previous ones, whenever matters of this kind were voted on and taken up, it was always the small end, the faithful ones remaining.

If there could be any question, Mr. Chairman and ladies and gentlemen of this convention, as to the merits of the resolution

adopted last night, it would be a different proposition. I do not see why we, as the delegates from our state, should hesitate to express ourselves on a resolution that was so plain as the one that was presented last night.

Mr. King said at the committee meeting yesterday afternoon, that as far as certain politicians were concerned in the State of Oklahoma, they possibly did not want to take a stand over there, and if there were any from Okahoma in the meeting last night, why didn't they express themseves contrary to the proposition made there by Mr King?

Oklahoma is not the only state that is interested. The gentleman from the Colorado commission expressed the interest that they have in it, and here is my friend, the chairman of the New Mexico delegation, who says the State of New Mexico is interested in the same proposition. Just why this conference should hesitate to memorialize Congress to pass this kind of a resolution, where the position is as plain as it was put up by Mr. King of Oklahoma, when there are two tracts of land, one held by a restricted Indian and the other by an unrestricted Indian; when the Indians get the same amount from the lessees, and in one case the State of Oklahoma gets $120,000 from the lessee, and in the other case they get nothing, simply because one is a restricted Indian and under the control of the Congress of the United States. It seems to me that to take a different position than we took last night would be saying that the delegates of this conference do not have the courage to take a position on the side of right. It is wrong.

Now, Mr. Gary last night said we did not know. If the position is not plain enough, that is a different proposition, but it seems to me that the matter was made plain enough in the statement by Mr. King of Oklahoma.

Mr. Gary: May I ask one question; I am asking for information. I am frank to say I do not like to reconsider a motion of this kind under these circumstances. At the same time, it is a matter that deeply interests me, and I have the feeling that if persons are not interested enough in the proposition to stay here until after the work of the association is over, that we are justified in acting.

It seems to me that Mr. King's absence this morning—I don't want to take any advantage of anybody—indicates that he was not greatly interested in the conference, but merely interested to get his own proposition through.

But there has been suggested to me this morning this question, that Oklahoma has a gross production tax, and that that tax is in lieu of a tax on the property itself; therefore, an unrestricted holder of real estate pays the gross production tax, and it exempts the real estate from tax. Do you know whether that is true or not?

RESPONSE: That is true.

MR. GARY: If that is true, then what Oklahoma, as it appears to me, is trying to do in this proceeding is to direct the tax at the real estate, because the gross production tax is in lieu of real estate, and they are trying to do indirectly what the laws absolutely forbid doing directly. Now, if that is true, we ought to go carefully about this matter.

My own position is, I should like information on it. This information came to me this morning; I know absolutely nothing about it.

MR. ZOERCHER: Mr. King stated yesterday afternoon that the production tax was in lieu of the ad valorem tax. He explained that yesterday afternoon.

MR. GARY: Then Oklahoma is trying in this way to tax by indirection — by a gross production tax — the lands of all Indians, which cannot be taxed directly; is that true?

MR. ZOERCHER: The gross production tax is only to reach the land of the lessees, and not the lessors; it does not touch the Indian's part at all.

MR. GARY: But, as a matter of fact, if a white person owns land in Oklahoma and leases that land, there is a gross production on that. Now, doesn't that exempt the entire land, or does it?

MR. ZOERCHER: It does not, as I understand it; it does not touch the lessor's part; it touches only the lessee's part. That is the way I understand it.

MR. DERHAM (of South Carolina): The preamble is the larger part of it. The resolution is contained in about two or three lines, that we are memorializing Congress to pass an act, already applied to the Osage Nation, applicable to all. That is the meat of the whole matter. There is no use of threshing it out. Mr. King is not here. I do not think that is material. I think we settled the matter last night, and it was thoroughly threshed out.

MR. VAUGHAN: Is any one here from Oklahoma?

MR. SAINT (of New Mexico): I had to leave the conference last night before you got to this resolution, No. 7. If you have voted to reconsider, would it be asking too much to have that resolution read?

CHAIRMAN LORD: Not at all. The gentleman requests that resolution No. 7 be read.

MR. SAINT: In New Mexico the Navajo is interested. We have the Navajo Reservation and we are interested in this. Oil dis-

coveries have been made there, and we have the finest grade of oil ever found, and we are looking for a big production. I am not posted on this resolution; I should like to know.

CHAIRMAN LORD: The secretary will read the resolution.

(The secretary thereupon read the resolution)

SECRETARY HOLCOMB: It was adopted by a vote of 34 to 17. The reconsideration is on the theory that it was not substantially unanimous.

MR. SAINT: Now, Mr. Chairman, Mr. Link of Colorado, one of the commissioners, and Mr. Howe of Arizona, I think, will bear me out; those states and Utah all corner on one stone, and the Navajo Reservation reaches over into New Mexico, from the heart of Arizona and the Yute Reservation joins it on the north, in Colorado; that is all one oil-bearing formation in there. New Mexico has already developed oil in our northwest county. Arizona, across the line, will surely get into the game. I don't know but what Mr. Howe may have an oil-well over there.

MR. HOWE: Yes, two or three coming up.

MR. SAINT: I think you have; but we are going to have a great oil field there. New Mexico has a pipe line there fifteen or twenty miles long and we are shipping oil today.

Now we know that on these lands, belonging to the Indians, we will get nothing from the lessee; the man that is operating; we will get nothing from him. We have that proven on our forest reservations. We are assessing the big timber interests in our country, and the government is selling their stumpage on the forest reserves, and we are getting nothing out of the product.

I have not gone into this thing at all. I am sorry I left last night, but I was not feeling well, and I think I should have taken a hand at this thing and probably talked a little more intelligently than I am talking now; but I am sure of one thing, that we are going to lose any assessments on the oil in the Navajo Reservation; don't you think so, Mr. Link, under the present law?

MR. LINK: There is certainly a very grave doubt about the situation; that is the trouble.

MR. SAINT: Now, Mr. Link, Mr. Howe and I represent the three states that are interested in the Navajo Reservation, and right across from Mr. Link's state is the Yute country. Is that right?

MR. LINK: Yes, sir.

MR. SAINT: And we are getting oil on all three of those reservations.

MR. LINK: I would say, besides, that we have absolutely hundreds of thousands of acres under the general control of the government.

MR. SAINT: We are piping it in and shipping it into Salt Lake City, or somewhere near there, for refining.

SECRETARY HOLCOMB: I feel that possibly I ought to say a word on this subject, although I hesitate to speak on matters of this kind, but it seemed to me last night, after I got into bed, very late, that we had overlooked a policy of our association that has been observed ever since I have been connected with it, and that is, since 1907.

However a resolution may appear to some, however much favor there may be for it, we have thought—and you will find that to be spread through the volumes—that where there was not what we call substantial unanimity on a question of policy, we should not adopt it. In various cases I recall that even the suggestion of that thing has caused the introducer of a resolution to withdraw it, because he saw we were going too far.

Now, here is a vote of 34 to 17, and to have that sent broadcast to Congress as the settled policy of the National Tax Conference, seemed to me ridiculous, and therefore I took it upon myself to ask one of our oldest members, one who has been attending the conference since I have known anything about it, if he did not think that it was perhaps unwise, and he said right away that it did impress him that we had gone back on the old historical rule that we have observed and which has been found so valuable.

Here we illustrate the unwisdom of the course. The question was asked here about the effect of this resolution, and a gentleman over here said that there was "great doubt". How do we know it is a matter of common knowledge? The resolution recites that the courts of last resort have said thus-and-so; how do we know? I don't know for myself, and no good lawyer would take that statement and cast a vote on it; he would at least want to read the opinion and read the citations and follow them down and make up his conclusions. Here we stand up and take these statements as if they were true. They may be true; but that is not the right way of doing business; the common-sense and lawyer-like, or business way of doing business. But aside from that, if there were substantial unanimity for a proposition, I should submerge my view, and I should say that some of these people are satisfied that these things are so, and I should not raise any question at all; I would vote for the resolution. As a matter of fact, I did not vote at all, and do not intend to vote at all, but it seems to me that this is too small a representation of the conference, and it is altogether too small a vote in favor as compared with the full vote. Therefore,

I suggest that we think of that one thing this morning and see if it impresses the others as it did me.

MR. DOYLE: It seems to me the only value that the action of the conference can have or any influence it can have is by unanimous vote of its members. If we petition Congress on something of general importance to the entire country, that is one thing. I do not see why a matter that affects the individual income of several different states is a matter that we can intelligently vote on or have influence on with Congress, and ask Congress to determine.

I think we ought to take a matter like this and lay it over until another meeting, at next year's conference, but even then I do not believe it should be brought before a conference of all the states of the Union. I think we ought to act on matters that affect the entire country.

DR. PAGE: I have very little to say, but I should like to give a little emphasis to my feeling, that it is extremely undesirable for the National Tax Conference to commit itself and vote for or favor a policy which it does not understand.

I am in full agreement with what the secretary has said with regard to the desirability of practical unanimity, and what the gentleman from New York has just said, that so far as possible, unless there is some urgent matter, that has to be taken up, where some grave injustice or irregularity is involved, that can be made perfectly clear to all of us, we should limit our resolutions to matters that are practically national in their force.

I have no doubt that the situation is a grave one to the states immediately concerned. I repeat, however, what I said last night, that it appears to be a technical question; one which has been under discussion in Congress; one which has been passed on by the courts of last resort, and it seems not to be quite fair for representatives of the few states that are immediately concerned in this thing to ask gentlemen who represent the other states of the Union to accord with their views about a matter that they do not understand. I believe that they have a good case. I believe that they have right on their side; but I should like to call your attention to the fact that we have heard nothing from the other side at all. We do not know. These gentlemen are naturally and necessarily interested in the revenues of their own states. That they take the position they do is to be expected, and it is proper that they should, but there must be another side to this question, if we could get at it, and we have not discussed it in the conference, except in connection with the resolution last night, in which only one side was presented; and I do regard it as being very unwise for the conference to establish the precedent of voting to support the request of gentlemen that come from particular states, more or less as a

matter of courtesy to them, and because of a personal liking for them, and confidence in them. To let our views on matters of that kind be determined on personal grounds, it seems to me is undermining the influence that the National Tax Association ought to try to strengthen and use in the future.

I shall have no more to say on this subject, but I should like to make an appeal to the members of the conference, as I did last night, not to cast merely a perfunctory vote on this thing; not to vote on something they do not know anything about; but to use a little thought and not be actuated only by courtesy to individual members for whom we have the highest regard; to consider a little bit the interest of the association itself in a matter of this kind.

MR. ZOERCHER: I want to make a motion that will, I think, terminate this matter. I do not want to do anything here. I hold no brief for the State of Oklahoma in this matter; but since Mr. Holcomb has expressed fear and doubt, and Dr. Page seems to be of the opinion that a mistake is being made, I move you, sir, that this resolution be made a special order on the afternoon of the second day of the next annual conference, and then it cannot be said that people will not have notice beforehand; that they did not know this matter was coming up. I move that this resolution be continued and be made the special order on the second day, in the afternoon, at the next session of the National Tax Conference.

(Motion duly seconded)

CHAIRMAN LORD: Moved and seconded that the resolution lie on the table until the second day of the next tax conference, when it shall be taken up for consideration. At what time?

MR. ZOERCHER: At two o'clock in the afternoon.

CHAIRMAN LORD: At two o'clock in the afternoon. Don't you think in connection with that, Mr. Zoercher, it might be wise to have a committee appointed to look into it and report, so that the conference may have the advice of the committee?

MR. ZOERCHER: I will accept that as an amendment.

CHAIRMAN LORD: Of course, what this conference may do has no binding effect on the next conference. This conference exists, and when it adjourns it is dead, but I haven't any doubt that with this record made, the next conference, at the time you indicate, will be willing to take this up; but if you could ask the National Tax Association to appoint a committee to look into this matter and report at that time, it might add some strength to that position. I think it would.

Mr. Zoercher: Mr. Chairman, I make the resolution to read as follows, then, that the resolution now lie on the table, and that we request the National Tax Association to have this matter fixed for a day certain at the next national conference, and that a committee be appointed to investigate the matter and make a report to be submitted at that time.

Mr. Gary: Mr. President, I take very great pleasure in seconding that motion. I am truly interested in this matter. I want to help Oklahoma as far as we possibly can. The matter seems to me to have very great merit, and I think this association ought to investigate it, and if they find it a proper field, pass a resolution. I take great pleasure in seconding that.

Mr. Link: Ladies and gentlemen of the conference: Those of us who come from mining states — and my state of Colorado is somewhat an oil state, and has always been an oil state in a small way for thirty years—understand the merits and demerits of these situations. Now, far be it from me to act against the policy of this association, or do anything in any way to interfere with that policy. I might say that in both the general and sub-committee on resolutions, as I stated last night, we went into this carefully, and to my entire satisfaction. If I had had no experience on the subject, all doubts were removed by Mr. King, who is assistant attorney general of Oklahoma, who is not biased by any personal selfish interest in this matter, but the equities are strongly with him.

Just to make it clear and to answer, in a broad way, some of the technicalities, the recent enactment of extensions of Indian contracts in Congress have themselves cured this defect, in at least three tribes in Oklahoma. Congress itself has made this wealth taxable. Now, why should we hesitate to hold back on technicalities when every state that has prospects of oil knows what the situation requires? This general act would apply to New York, Missouri, or any other state. That will probably answer the technicalities of the matter.

Here is the worst thing, from another standpoint. We have not reached an agricultural stage in Colorado, but as I explained last night, the oil business is the most rapidly exhausting wealth or industry in the world. You strike an oil well, and no matter how powerful and strong it is, it generally runs at the rate of thousands of barrels a day; and so it is with the State of Oklahoma, under this act, which is conceded as an outrage by everyone, and I may say, Mr. Chairman, that many companies and many men who hold these leases of restricted Indians do not question this; they go and pay their taxes in spite of that technicality; they are fair enough to do it; but it is lost daily, and in the next year it will cost Oklahoma hundreds of thousands of dollars. There is the

shame of it. With due respect, considering this motion, why would it not be better for several of us on the resolutions committee to go to work on this resolution and cut out any improprieties?

Now, instead of laying this over for a year, why wouldn't it be better, if it is a matter of propriety; if it is a matter of technique, or something of that kind; to cut out the memorialization of Congress specifically, which I should be glad to consent to, and do just as Mr. Holcomb did yesterday in himself amending Senator Van Alstine's educational resolution; cut out the objectionable features, but let us pass a resolution for fairness in taxation in Oklahoma and all other states, at least embodying general principles. Now, I submit, Mr. Zoercher, that would be better, that we certainly ought to be able to amend this to cut out the memorialization entirely, and I should like to ask Mr. Holcomb, if that is done; if we cut out the memorialization of Congress and make it a matter of general principle, that in the opinion of this conference this ought to be taxable — as to whether or not that would remove the objectionable features.

SECRETARY HOLCOMB: Of course, I don't know. I am only discussing the question of unanimity.

MR. LINK: I wanted your opinion.

SECRETARY HOLCOMB: I should say there is nothing in the resolution about memorializing Congress.

MR. LINK: I thought the main objection was to memorializing Congress.

SECRETARY HOLCOMB: There is no memorializing of Congress in it.

MR. LINK: What are the features that are objectionable?

SECRETARY HOLCOMB: My own objection is on the vote last night, it was so small.

MR. LINK: I am trying to get at the reason for the vote. Would there be an objection to the conference going on record in favor of the principle that those wells ought to be assessed?

SECRETARY HOLCOMB: I think that a resolution could be drawn in a general way that would meet with unanimous consent, but it would take time. I don't know whether we have time.

MR. LINK: It won't take but a few moments. I move you as an amendment to Mr. Zoercher's motion, Mr. Chairman, that a committee consisting of Mr. Holcomb, Mr. Zoercher, and the secretary of the resolutions committee be appointed to redraft this resolution to be submitted; it will take only a few minutes to do it; and I believe that will solve the problem.

(Motion duly seconded)

MR. ZOERCHER: I believe that is the proper way out of this tangle. I voted myself last night for this resolution. I am unwilling to go to the point of undoing what we did last night. For us to undo it would be to do an injustice to the State of Oklahoma and these other states.

In accordance with what Mr. Link has said, why not strike out the features which are objectionable, and perhaps we can have a practically unanimous vote here and reaffirm the historical position of the National Tax Conference, against these schemes, referring particularly to these particular ones.

CHAIRMAN LORD: You have heard the amendment to the motion of Mr. Zoercher. Are there any further remarks?

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: The ayes have it. Are you ready now for the original resolution as amended. Are there any remarks on that? This was an amendment that we have adopted; we have not adopted Mr. Zoercher's motion yet. All in favor of that motion will signify by saying aye.

(Ayes and Noes)

CHAIRMAN LORD: The ayes appear to have it, the ayes have it, and the motion is adopted.

MR. LINK: I want to apologize to the Chair; I should have said the reason I mentioned Mr. Holcomb, Mr. Gary and Mr. Zoercher was that they are the three whom I am sure will solve this problem easily.

CHAIRMAN LORD: I think your amendment carried the matter as to the membership of the committee, and the committee will immediately retire and bring us in a new product.

DR. PAGE: I do not know whether the secretary has time to serve on this committee. I do not see how he can leave the meeting at present and serve on this committee, because the rest of the business depends on having the secretary with us.

MR. LINK: I think we ought to have Mr. Holcomb, because he has the most experience in all these matters.

CHAIRMAN LORD: There is an old saying, if you want a job done quickly, get a busy man to do it, and I guess on that theory Mr. Holcomb is the man to serve on the committee.

(The committee retired)

Are there any other matters to come before the conference while we are waiting? There is a portion of the program I think that we can take care of right now while the committee is reshaping this controversial resolution. There are several invitations from different cities that have been extended to the association to meet next year, and one of these cities is the City of Santa Fe. I have pleasure in presenting to you Mr. Saint of New Mexico, who would like to tell you something of the beauties of that state.

(Mr. Saint of New Mexico thereupon extended to the conference an invitation to hold the 1925 conference at Santa Fe, New Mexico.)

(Mr. Forney of Ohio also extended an invitation to the conference for the 1925 meeting to be held at Cleveland, Ohio.)

CHAIRMAN LORD: Ladies and gentlemen, I understand that this committee is ready to report, and we will listen to the report.

SECRETARY HOLCOMB: Having been named first on that list, I have acted as chairman. I trust that you will not expect anything very elaborate and very satisfactory in this brief space of time; but the committee was unanimous in the suggestion of this substitute. I wish you to realize that this was done in such a hurry that it might possibly be better to go over it for form later.

> WHEREAS, It has been represented to this conference by a delegate present from the State of Oklahoma, that a situation exists whereby unreasonable exemption from taxation of the production of the lessees of certain Indian lands obtains; and,
>
> WHEREAS, his representations and statements on behalf of a plan to cure this situation appear to be well considered, therefore,
>
> BE IT RESOLVED, that it is the sense of this conference that the exemption from taxation of natural resources, on the mere ground that such resources have been derived from restricted Indians, seems unjustified, and should not obtain.

MR. ZOERCHER: I move the adoption of the substitute.

CHAIRMAN LORD: Is there a second?

(Motion duly seconded)

CHAIRMAN LORD: It is moved and seconded that the resolution just read be substituted for Resolution No. 7, of the resolutions adopted last night, and to take its place. Are you ready for the question?

(Call for the question)

(Ayes and Noes)

CHAIRMAN LORD: The ayes appear to have it, the ayes have it.

DR. PAGE: Mr. Chairman, I would suggest that a copy of the new form of the resolution be forwarded immediately to the gentleman from Oklahoma, so that he may not take any action based on what was voted last night; so it will get there in time to prevent him from disseminating copies of that other resolution to congressmen or others, which it appears does not now represent the sense of the conference.

CHAIRMAN LORD: Is that a suggestion, Doctor, or a motion? Mr. Secretary, will you be willing to comply with that suggestion? I think that I will take it on myself to say that he will.

MR. W. R. BRADLEY: There is just one matter I have in mind, that I should like to mention. I don't know whether to put it in the shape of a motion or not, but I want to call it to the attention of the conference, and that is the matter of the report of the talks and so on that we heard here, but that we are not able to take away with us, because they are not in any form. We can take only what we can remember, and frequently matters of much importance come up and discussions of such interest that we should like to take a paper home with us and not be forced to wait until the *Bulletin* is published or until the record is published, which is nearly the end of the year, and I was just wondering if it would not be well for the speakers to have their talks mimeographed and a sufficient number made so that each member could secure a copy of that before he left the convention, to take back with him. I don't know that the cost would be very great. It might be that the association could pay the cost of having these speeches mimeographed. There are several I should like to have right now; I have tried to get them, but I cannot. I cannot remember all that was said. They are matters of importance that I should like to have; and I just throw that out as a suggestion, that we may improve on this in some way so that we could get this information before we leave the conference.

MR. HECKELER (of New York): A thought occurred to me last night, and this is what I had in mind: we come here to these conferences, and we know in a general way what is to be discussed, but we do not know the points that will be raised by these various papers, and when we come here these propositions are read to us rather hurriedly, because of the time limit, and quite a few questions are asked, but the general audience is not posted sufficiently to ask the proper kind of questions or enter discussion, and it occurred to me that it might be a better plan if the gentlemen who prepare papers would prepare them a month in advance and send copies around to the members, and then we can have a discussion in open meeting of the papers.

SECRETARY HOLCOMB: If you get them one day in advance, you will do well.

CHAIRMAN LORD: The suggestion is undoubtedly a good one, if it could be enforced, but I am afraid we should have difficulty in getting people to present their papers in that way. The secretary has told me that in the past it was even difficult to get them on time, and there is no way of enforcing it. What is your further pleasure?

If there is no further business to come before the conference, a motion to adjourn the conference will be in order.

I will say that immediately after the conference adjourns, the National Tax Association will hold its meeting here for the purpose of hearing reports and electing officers for the ensuing year.

MR. ZOERCHER: I move that this conference do now adjourn.

MR. LINK (of Colorado): Just a moment before we adjourn.

(Mr. Link thereupon extended an invitation to the conference to hold its 1925 meeting at Colorado Springs.)

SECRETARY HOLCOMB: I really feel I owe it to the gentlemen who have extended invitations to merely mention the fact of their reception, because they have specifically requested it; and I have letters from governors in some cases, and other prominent officials, and it would not be fair to merely put it upon the record.

I have a telegram from Spencer Penrose of Colorado Springs, turning over the Broadmoor Hotel at the rate of nine dollars a day, and offering a free trip to Pike's Peak.

I have beautiful literature from the Hotel Frontenac in Quebec; and Mr. Pomeroy, our good friend, if he has not extended an invitation, is desirous that we go to Toledo, Ohio, and has extended various invitations from officials.

Columbus, Ohio, has extended an invitation, as has Detroit, and also Grand Rapids, Michigan; San Francisco, West Baden Springs Hotel, Indiana; and we have one from Philadelphia for 1926.

Of course, Mr. Saint has already impressed upon us the wishes of New Mexico; and I have a letter from the Governor. Governor Silzer of New Jersey, as you know, is noted for his emphasis on economy in public expenditures. Mr. Schroth, Secretary of the State Board of Taxes, has been here all the time—apparently he is not here now—and I have a letter from Governor Silzer, displaying great interest in taxation. He wants us to think of Atlantic City, and is also fortified by a strong letter from Judge Jess, who was formerly the Chairman of the Board of State Tax Commissioners of New Jersey, who has now been appointed to the circuit bench. I have a personal letter from him, strongly emphasizing the idea.

Here is also Buffalo, New York; Edgewater Beach Hotel, Chicago; and the Merchants Association of New York.

We shall have these noted in the record in such ways as I may.

MR. ZOERCHER: I renew the motion that this conference do now adjourn.

(Motion duly seconded)

CHAIRMAN LORD: Motion is made that the conference do now adjourn *sine die*. Any remarks?

(Ayes and Noes)

FINAL ADJOURNMENT

BUSINESS MEETING OF THE NATIONAL TAX ASSOCIATION

SEPTEMBER 19, 1924

DR. THOMAS W. PAGE, presiding.

VICE-PRESIDENT PAGE: Gentlemen, in the absence of President Bailey, it devolves upon me to call the National Tax Association to order.

Mr. Secretary, are you ready with your report to the National Tax Association? The report as usual must be heard, but I know that you are all anxious to finish and take the train, so we will not bother much with the details of the report.

(Secretary Holcomb thereupon gave a summary of his report)

CHAIRMAN PAGE: You have heard the report; what will you do with it?

(Motion to adopt report)

(Duly seconded)

CHAIRMAN PAGE: Motion is made to adopt the report. Any remarks?

(Ayes and Noes)

CHAIRMAN PAGE: It is unanimous.

Is there any other business before the association? Is the committee on nominations prepared to report?

MR. SAMUEL LORD: Your committee on nominations begs leave to present the following report. The committee recommends for your consideration as President of the association for the ensuing year the name of Thomas W. Page, of Washington, D. C.

The committee recommends for your consideration as Vice-President of the association for the ensuing year the name of George Vaughan, of Little Rock, Arkansas, special counsel in tax matters for the State of Arkansas.

For Secretary and Treasurer of the association, we recommend for your consideration to succeed himself the name of Alfred E. Holcomb, of New York.

For members of the executive committee for the term expiring in 1927, we recommend the following named members of the association: S. E. Forney, chairman of the Ohio State Tax Commission; W. H. Blodgett, Commissioner of Taxation for the State of Connecticut; and our good friend J. E. Saint, chairman of the New Mexico Tax Commission.

This is the unanimous report, and to save the president from any

possible embarrassment, I will assume to ask if there are any further nominations.

MR. ZOERCHER: I move that the report of the committee be adopted.

MR. LORD: Are there any further nominations?

(Call for the question)

MR. LINK (of Colorado): I move you that the report of the committee be adopted, and that the secretary be authorized to cast a unanimous ballot for the nominees.

(Motion seconded)

(Ayes and Noes)

(Motion carried; report of the nominations committee adopted)

PRESIDENT PAGE: Is there any further business before the association?

MR. GEORGE M. HAGEE: I wish to thank all the delegates and particularly the members, for coming to St. Louis. I hope that you have had a good time and a profitable convention. I know Missouri has profited a great deal by having you here. A great many people who are interested in taxation, members of the legislature, members of the constitutional convention, and people interested in taxation generally have attended these sessions. I am not a delegate, but I know Missouri will profit a great deal by this convention having been held here, and we thank you for coming.

SECRETARY HOLCOMB: Just one thing: I forgot to mention a very important town, as it did not appear in my printed matter, but Washington, D. C., would be pleased to be considered as a city worthy of having the next conference. We had a cordial invitation from the Chamber of Commerce of that city.

MR. COLLADAY: May I supplement that? As well as being a member of this association and a delegate here and representing the president of the Washington Board of Trade, in behalf of Washington I want to extend a most cordial invitation for the next meeting of this association, the next conference, to be held in the District of Columbia. As a delegate appointed by the commissioners of the District of Columbia, I have no hesitation in extending the invitation in their behalf.

PRESIDENT PAGE: The invitation from the City of Washington and the invitations that have been received from other cities will be referred to the executive committee of the association, to take such action as they may deem wise. I believe that is the customary procedure.

Any other matter? If there is no other matter, then a motion to adjourn is in order. Do I hear a motion to adjourn?

(Thereupon the meeting adjourned)

ATTENDANCE AT SEVENTEENTH ANNUAL CONFERENCE

ALABAMA

Herzberg, L. L.
Marquis, F. C.
Pitts, T. F.

ARIZONA

Henshaw, G. R.
Howe, C. R.

ARKANSAS

Sloan, H.
Vaughan, G.

CALIFORNIA

Lutz, H. L.
Plehn, C. C.
Smith, R. W.

COLORADO

Link, C. P.
Hetherington, G.
Niehaus, C. J.
Walpole, N. S.
Collins, C. W.
Wallinger, E. J.
Correy, J.
Spalding, G.

CONNECTICUT

Holcomb, C. S.
Blodgett, W. H.

DELAWARE

Nielson, A. C.
McHugh, F. A.

DISTRICT OF COLUMBIA

Benton, Miss G. B.
Brannen, C. O.
Brewster, K.
Colladay, E. F.
Drake, C. A.
Friday, D.
Hamel, C. D.
Harrison, W. L.
Johnson, P.
Page, T. W.
True, W. W.
Winston, G. B.
Walker, J. E.
Walters, B. R.

FLORIDA

Amos, E.

GEORGIA

Lippitt, A. L.
Lyle, E.
Lyle, Mrs. E.
McPherson, J. H. T.
Richardson, A.

ILLINOIS

Baldwin, W. W.
Bogg, H. B., Jr.
Bogg, Mrs. H. B., Jr.
Feldman, M. J.
Flinn, B. W.
Halls, J. C.
Hunter, M. H.
Litsinger, E. R.
Leander, E. G.
McClinton, J. W.
Malone, W. H.
Osgood, R. C.
Packard, F. E.
Paddock, H. W.
Parker, F. A.
Raut, A.
Sayler, J. L.
Sutherland, D.
Veazie, W.
Viner, J.
Watson, J. C.
Weigle, M.
Weigle, Mrs. M.

INDIANA

Crobaugh, C. J.
Foster, S. M.
Miesse, H.
Zoercher, P.
Zoercher, Mrs. P.

IOWA

Burbank, W. J.
Cherrington, H.
Colladay, W. M.
Garrett, N.
Johnson, R. E.
Maxwell, E.
McGaughey, J. D.
Ramsay, W. C.
Simons, H. C., Jr.
Thomas, J. E.

KANSAS

Black, H. C.
Bowman, N. L.
Carroll, J. A.
Harper, H. D.
Kessler, J. M.
McClure, Mrs. L. J.
Ryan, J. M.

KENTUCKY

Belknap, W. B.
Hieatt, C. C.
Leland, S. E.

LOUISIANA

Derbes, L. J.
Hart, W. O.
Sneed, H. P.
Stone, Mrs. F. H.

MAINE

Jordan, C. A.
Stubbs, P. D.
Wheeler, E. W.

MARYLAND

Brittain, E. S.
Griffith, F. J.
Leser, O.
Murphy, L. S.
Price, J. D.
Ray, J. E.
Ray, Mrs. J. E.

MASSACHUSETTS

Alexander, T.
Alexander, Mrs. T.
Allan, J.
Gottlieb, S.
Holmes, A.
Locke, J. W.
Long, H. F.
Mathews, G. W.
Mathews, Mrs. G. W.
Moran, J. H.
Stacey, S. L.
Todd, N. B.
Wakefield, E. E.
Young, B. L.

MICHIGAN

Berry, R. H.
Boothe, J. L.
Caverly, H. L.
Hutchinson, W.
Seidman, F. E.
Temple, C. E.

MINNESOTA

Adams, G. L.
Adams, Mrs. G. L.
Armson, J. G.
Burton, H. J.
Dooley, F. E.
James, F. B.
Lord, S.
Mueller, W.
Nelson, N. A.
Preston, C. H.
Sanders, M. T.
Scott, J. A.
Scott, Mrs. J. A.
Sturtevant, C. G.

MISSISSIPPI

Coody, A. S.

MISSOURI

Barker, C.
Barker, Mrs. C.
Bear, S. J.
Behr, P. B.
Büder, W.
Bunker, W. A.
Cady, T. S.
Caldwell, D. C.
Carlis, A.
Carver, A. L.
Case, J. F.
Conaway, W. A.
Cowdery, C. D.
Darnell, E.
Darnell, Mrs. E.
Fowler, T. R.
Freund, A. J.
Gilbert, C.
Hagee, G. M.
Hellmich, A. J.
Herpel, G. M.
Herpel, Mrs. G. M.
Hunter, S. B.
Hurni, E. J.
Huth, G. A.
Junkin, J. S.
Kunkel, D. B.
Laws, C. R.
LeFort, C. B.
Lippincott, I.
Lippincott, Mrs. I.
Loeb, I.
Lowenhaupt, A.
McCoy, R. A.
McIntyre, S. L.
Matscheck, W.
Meade, R. W.
Meador, E. N.
Meredith, A. R.
Miller, A. E.
Monier, R. H.
Moore, Mrs. P. N.
Naylor, J. C.
Reed, T. S.
Robards, C. H.
Rowe, W. G.
Rowe, Mrs. W. G.
Salkey, J. S.

Schwebel, G. A.
Seibert, J. M.
Sessinghaus, O. F.
Shartel, S.
Smith, O. A.
Spencer, R. P.
Stinde, E. B.
Vierling, F.
Vinnedge, C. A.
Wachtel, M. C.
Wadill, J. F.
Waite, S. S.
Wass, J. K.
Wass, Mrs. J. K.
Whissell, G. B.
Wilson, A. O.
Wood, M. B.
Woods, J. M.
Wright, O. W.

NEBRASKA

Buckingham, W. H.
Hall, C. E.

NEW HAMPSHIRE

Matthews, J. S.
Matthews, Mrs. J. S.

NEW JERSEY

Atwood, A. W.
Conklin, W.
Huegel, J. W.
Hyland, J. L.
Leighton, W. M.
Moore, W. C.
Murphy, S. W.
Sandmeyer, W. E.
Schoenthal, I.
Schroth, F. D.
Simms, E. W.

NEW MEXICO

Asplund, R. F.
Beall, Byron O.
Chavez, M.
Hunsaker, D.
Saint, J. E.

NEW YORK

Andrews, K.
Atkinson, R. C.
Blauvelt, G. A.
Bradford, R. L.
Broderick, J. P.
Brown, R. R.
Brownell, G. G.
Brosseau, A. J.
Burke, W. J.
Buckley, D. A., Jr.
Cashin, D. J.
Cassidy, J.
Cole, S. T.
Dalton, C.
Davenport, G. I.
Davidson, C.
Day, F.
Dee, M. F.
Doyle, E. P.
Dunham, F. G.
Elwell, G. B.
Fernald, H. B.
Frazer, C. R.
Frey, M. F.
Gerstenberg, C. W.
Gottlieb, L. R.
Graves, M.
Hecht, C.
Hecht, Mrs. C.
Heckeler, R.
Holcomb, A. E.
Holcomb, Mrs. A. E.
Holmwood, F. F.
Howard, M. S.
Jonsson, G. W.
King, W. H.
Kehoe, G. R.
Kopald, H. G.
Lasher, H. F.
Lynch, T. M.

McCloy, J. F.
McKenzie, H. C.
Major, C. A.
Mitchell, J. J.
Montgomery, R. H.
Mendes, H. E.
Moran, J. H.
Moriarty, E. J.
Murray, T.
Opdyke, H. G.
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PRELIMINARY CONFERENCE ON INHERITANCE AND ESTATE TAXATION HELD IN CONNECTION WITH THE SEVENTEENTH ANNUAL CONFERENCE OF THE NATIONAL TAX ASSOCIATION,

SEPTEMBER 15, 1924, 10 A. M.

EDITOR'S NOTE

This conference was arranged by a committee of the National Tax Association, of which Mr. W. B. Belknap was chairman, and was designed to afford a somewhat more detailed and extended discussion of the special questions arising with respect to inheritance taxes than is possible at the sessions of the general conference of the association.

Notice of this preliminary conference was issued to all state officials directly concerned with the administration of inheritance taxes and was widely published. To further promote the success of the meeting, a letter was mailed to the governor of each state, enclosing a statement by Mr. William Bailey, president of the association, calling attention to the conference, outlining the situation presented and suggesting the possibility of a joint conference of federal and state officials, for the purpose of considering the possibility of relief from inheritance tax troubles, through cooperative legislation by the states and through the repeal of the federal estate tax, or its modification.

This statement was also sent to the Secretary of the Treasury of the United States, to state tax officials and to such others as it was thought would be particularly interested. A copy is here inserted, as being of advantage to a better understanding of the scope of the discussion which follows;

SUGGESTIONS FOR RELIEF FROM THE PRESENT WELL-NIGH INTOLERABLE SITUATION AS TO INHERITANCE AND ESTATE TAXES

The development of the plans for the discussion of inheritance and estate taxes at the National Tax Conference, to be held at St. Louis, September 15-19, has gradually assumed a form and an importance which make it seem desirable that a statement be made in advance of the conference, to those who may be assumed to be particularly interested in the situation thus developed.

It has become evident that the time has arrived for action of a somewhat more fundamental character than mere meeting and discussion by those who will attend the conference. There is imperative need for concerted action of a somewhat official character.

The general dissatisfaction with present death taxes admittedly arises from two main causes.

First: The entrance of the Federal Government into the field, taken in connection with other so-called "war taxes" was at once seen to seriously disturb the taxing status of the states, which had been using this source of revenue for many years and had come to rely upon it for state and local financing. The personal and direct nature of this tax, rendered it peculiarly susceptible to disturbance by the dual use. This was evident under the rates fixed in the original federal law, but there was probably no general feeling that the tax would remain longer than war needs demanded and certainly no thought that the rates would be increased to the extent shown in the Revenue Act of 1924, with the added irritation of the so-called "Gift Tax".

These recent developments raise the question whether the Federal Government is to retain the tax permanently. If so, this situation must be faced and the reaction upon state inheritance taxes be met by the states.

Second: The other of the two chief questions is that which has long been presented in state inheritance taxation, to wit: the confusion, irritation, expense and burden of state taxes imposed by numerous states, often operating upon a single estate, but designed and administered by these various states without due regard for the consequences. This problem is perhaps most acute in the case of non-resident estates, and has of course been emphasized and exaggerated by the factor of the federal tax.

The retention of a permanent federal estate tax, at heavy rates, will necessitate adjustments in the fiscal policies of certain, if not all the states; on the other hand, an absolute prerequisite to the abolition of the federal tax is definite action on the part of the states looking to the removal of the harassing and burdensome results of present state inheritance tax legislation, taken without clear regard for interstate comity and neighborliness.

The following definite alternatives are therefore sharply presented at this time and demand the serious attention of all citizens, who must necessarily look to the state and federal officials in the first instance for a solution.

1. Abandonment of inheritance taxes as a source of state revenue.

2. Collection of such taxes by the Federal Government, with distribution by it of part or all of the yield among the states.

3. Abandonment of these taxes as a source of federal revenue, with a working agreement among the states to accomplish equitable results.

With a view to having some more or less official expression of opinion on these alternatives, it is suggested that the Governor of each of the states be asked to authorize one or more of the delegates who will attend the conference of this Association above mentioned, to express the Governor's personal views, in the general discussion of these alternatives at that conference and that such representatives be further authorized to express the Governor's views as to the desirability of calling a conference early in 1925, in which the federal officials will participate, designed to consider the matters more specifically and reach a conclusion as to what is possible and desirable. The result would naturally be, eventually, federal legislation for the modification or repeal of the federal estate tax, and state legislation looking to the improvement of state taxes.

Concerted action taken in the proper way and with due regard to all factors in the problems, seems likely to result in substantial accomplishment.

WILLIAM BAILEY,
President, National Tax Association.

Salt Lake City, Utah, August 20, 1924.

W. B. Belknap, presiding.

Chairman Belknap: Gentleman, I am very glad to see a good attendance. We have a very interesting subject, and a subject that is so many-sided that we shall have to work very fast to get anywhere. We are going to try to hold the papers down pretty thoroughly to their allotted time, and try to give everybody an opportunity to speak, who desires to express his opinion. We shall, of course, have to be a little arbitrary and ask you to confine your remarks to the subject in hand, and not to speak twice unless other people have been heard. It is very easy to shut off some of the most interesting people by the fact of their over-modesty.

We are going to have first just the more or less usual discussion of the problems of inheritance taxation. As the meeting shaped itself we found that due to recent congressional activities we were up against a real problem. Under the well-worn phrase, we are confronted with facts and not with theories today. Mr. Bailey sent out the letter which I think most of you have seen, to governors of the states, asking them to appoint delegates to this meeting and to have them ready to discuss what the states thought should be done. I am sorry to say that not a great number of governors replied to that letter, but I think the size of the audience argues that a good many of them took more interest than their replies would indicate.

As the meeting took shape, we had the feeling that we were going to have to discuss the problems, with the idea of not just bringing out facts, but of trying to get some sort of action, and I hope, as the papers are read, you will consider them in the light of what we are going to do, what we can do, and will do.

I am going to say a few more words; then we will hear from Mr. Dunn. This afternoon will be pretty largely an experience meeting, and I believe most of the violent discussion will naturally come then.

I was interested in reading in one book that the reason that Rome fell was that it levied an inheritance tax, and that the inheritance tax ate up its capital and so destroyed the state. I do not believe it. I do not believe it for a minute. I have seen a hundred other reasons why Rome fell. Each man that talks, says that Rome fell because it did the thing he was talking against. If he is a prohibitionist, it was because Rome drank wine. The only thing I did not hear was the anti-smokers say that Rome fell because they smoked. I do not believe for a moment that Rome fell because of the inheritance tax. No one thing destroys a nation.

I say that because there are two tendencies: there is the tendency to underestimate the dangers of the present situation, and there is a danger to overestimate the seriousness of our problem and get ourselves laughed at, without accomplishing anything.

Now, the problem is serious enough without exaggerating. I have had several letters from various parts of the country, some of them from gentlemen in the audience, who are very much upset because the economists are irritating the people by talking about this inheritance tax; that if they would keep still, they would not know the tax is going to be put on until they are dead, and then it would be too late to worry about it. So that is one point of view.

The other point of view is that of the people who have had to deal with this tax in the way of settling estates and who have had their troubles. They go to the other extent and say that the whole tax law should be abolished; that there is no right in any inheritance tax anyhow.

As usual, I believe the truth lies in the middle ground. But there are three very real problems in connection with death taxation, as I group them. First, the infinite multiplication of these taxes; second, the resultant delays and expenses of settlement of the estate.

The first is a question of the tax itself piling up; the second, the resultant delays and irritation and expense in settlement of the estate, in paying the tax, not of the tax itself, but getting over all the formalities.

Third, the inequalities and injustice due to the various tax laws themselves and to the very frequent changes in those laws.

You can divide the evils up under that classification. That gives us, to my notion, a way of attacking it—the multiplication of taxes, the expenses of paying them, and the numerous minor injustices and inequalities in each individual state.

Now, I do not need to go over again what all of you know, as to how the taxes have piled up, due to the taxation of non-residents, according to about seven different theories, and due to the fact that occasionally there is claim of double domicile or even triple domicile.

I show in the paper that I sent a good many of you that theoretically this could mount up to 209 per cent of an estate.

I sent out letters asking various persons if they had run onto any cases where actually all of an estate had been taken in death taxes, and none of the persons knew of such cases; several of them said it was not possible. I want to say that it is possible. I know of one case in my own home town, Louisville, Kentucky, where the whole estate has been taken, or at least the whole estate was to be taken, in taxes. Whether any way out of it has been found, I do not know. That estate was mixed up between several states in this country, the Federal Government and the French Government. It was not all under the Stars and Stripes; but death taxes can and do take a very large portion of an occasional estate.

I know of another estate in Philadelphia—I do not know where the estate is—but here are the circumstances: the people lived in New Jersey; they kept the securities in Pennsylvania; the property was in West Virginia, and for all I know it may have been incorporated in New York. It was a fairly large piece of property, and a friend of the family, who was telling me about it, while he had no actual figures in hand, said that the whole of the estate had been taken in death taxes. I do not believe that, but undoubtedly a very large part of the estate was taken in death taxes, because they would have four full taxes, New Jersey, Pennsylvania, West Virginia and the federal, so that it is not fair to say that this cannot happen. It can happen.

Other people have written that this happens so seldom that it does not make any difference. Yes, it does. There is where death taxes vary, to my notion, from most of the other taxes with which we deal. Why? If an annual tax takes all of a man's income, we will say, for one year, that man has still a chance to save what property he has accumulated during his lifetime, before the next tax date rolls around; he has some comeback. But if an inheritance tax works an injustice, that injustice is worked on the capital of the man's property, and it is worked for good and all. It is levied only once. Once you have made the mistake, there is no correcting, and the seriousness of it, due to the size of the tax, is very, very great.

Now, just mentioning the second heading, which I note will be pretty thoroughly covered, I will say that I have had difficulty in getting any definite figures from anybody as to what the expenses of settling an estate were and of the litigation which almost always arises in any good-sized estate.

I was lucky in New York this summer in running into an attorney who used to handle probate work. He told me the cost of handling a seven hundred thousand dollar estate, which he said was a little higher than the average but was not at all unusual. It had cost twenty thousand dollars to get the waivers and what little litigation there was settled up and the taxes collected by the states were thirty thousand dollars.

There you have the very distinct problem. One of the gentlemen present has said to me, "Well, it is perfectly simple; all you have to do is to send the stuff into our office and we attend to it." He forgets that Jim Jones' widow down in Simpson, Indiana, does not even know that there is an inheritance tax office in, we will say, Illinois, for instance. She does not know that there is an inheritance tax law; she likely does not know anything about inheritance taxes; has never heard of them, until she read of them in the *Saturday Evening Post* recently. But there is the problem. It is not a problem to a highly-paid lawyer, knowing where to send these papers. Of course, he does it, and he charges accordingly. It is not a problem of some other tax man not knowing where they ought to go, but it is a problem of 110 million people being confronted with a tax, which falls only very occasionally, and about which they know nothing, and to get it settled they have to turn it over to an attorney and pay attorney's fees.

That is the thing that has made people greatly interested in the subject. We are apt to forget that while it seems perfectly simple to send to the State Capitol and get it fixed up all right—simple for the people who know about it—it is not simple for the man on the street.

When it comes to the costs of collection, they are much larger than they ought to be. I think that will work itself out in time, as the processes get standardized and the state departments and commissions get their work really done at their end.

There is the third end of the problem, namely, the injustice and inequalities within the states themselves. That is perhaps the most difficult of all the problems to get any light on; to get any action on; I mean that will get us anywhere. A man may die in Illinois, having one brother in Illinois and another in Indiana, just over the state line, which ties them up not only to very, very different rates on property that goes to the children; and the very fact that we draw the state lines in this way leads to trouble. I think Florida is going to cause us as much trouble as any other state, by

this constitutional amendment they have up, promising never to levy an inheritance tax. They are making a bid for the rich people of the country to come down there, and they are going to cause all sorts of trouble, because they wont come in on a fairly equitable basis with the rest of the states.

Now, there is one point that most people have not emphasized in this connection, and that is the continual changing of the death tax laws. Our legislators are so used to dealing with an annual tax that they do not see that changing a death tax makes any difference. Now, if you change an annual tax, it hits everybody the same; it hits harder next year or not so hard; but if you change a death tax every two or three years, when a man dies the day before that law goes into force, he gets off lightly, but the man who dies the day after, gets hit heavily. In other words, our whole legislative machinery for taxation has been geared up for annual taxation, and practically taxation on income is what it usually amounts to; whereas under present conditions, death taxation is taxation on capital and has to be met in an entirely different way.

This does not sound serious, until you start to go over the changes in the laws. I have some figures here of the changes. If my memory is right, thirty-five states have changed their laws since 1917. When I say "changed" them, I do not mean little amendments. I think Idaho is the only state in the Union that has not amended its inheritance tax law one way or another in fairly recent times. In thirty-five states since 1917 they have changed their tax laws; twenty-odd states since 1920. Every time the legislatures meet they have one sporting event, that is devoted to inheritance tax changes, apparently, and they try to see which legislature can change the most. If you will read over the changes in the laws, you will see what happened.

Now, what are we up against now? If you will read the federal tax you will see that there is to be a 25 per cent rebate of the tax on account of state taxes paid. That means that every state legislature which is going to meet from now on is going to sit down and figure and scratch its head to make sure its taxes are high enough so as to get back that 25 per cent rebate. It amounts to 25 per cent of the tax paid. They are going to sit down and figure that the taxes paid within their particular state are going to be high enough so that they will be sure to get their rebate back from the Federal Government, because they will say otherwise the Federal Government takes it and our citizens won't get it anyway, so we must get it.

So we have not only a beautiful lot of changes every year, but we are going to have even more changes in the next two or three years; and those changes work a real injustice.

Perhaps the only real encouragement is the size of this audience.

When we started to work in 1920 we did not have much enthusiasm shown about inheritance taxes, but the situation has gotten so very serious now that it is general; interest is not centered in a few tax officials and in a few college professors.

We are here to attack the problem with force, and we want to take some sort of action to at least start the ball rolling, to bring about better conditions in death taxation. I say that without any intention that the state shall lose any revenue; I say it without any feeling of criticism of the men who have drawn up the laws. It is a situation that has arisen because of the form of our government, not because any person has been trying to be mean about it; but the situation is here, we have it to face; and I hope that before the day is over, we shall get some suggestions that will help us to take action that will start something going in this country.

I would like to introduce Mr. Dunn, of Cleveland, who will talk to you for a few minutes.

Mr. Dunn (of Cleveland, Ohio): Mr. Chairman and friends: Were you to take up the question of trust company problems as related to inheritance tax and estate taxes, I believe that it would take all day to go into them in detail, because each estate presents a different problem. We run into different angles, so much so that it was not felt important at first, as your Chairman has said; but some of the diverging lines are beginning to come back, one state retaliating against another, so that it is becoming a real problem.

I suppose some of the representatives of the different states here, when they size up the situation as to inheritance taxes, consider it from what they themselves do within their own borders, and not how it is affecting the non-resident whom they tax. They feel possibly a good deal like the Englishman who was walking through the woods with an American friend, and they heard an owl hooting. The Englishman said to his friend, "What is that noise?" "Why," the American said, "that is an owl." The Englishman made no remark; walked along a short distance, and finally the owl hooted again. He said to his American friend, "What is that noise?" "Why," the American said, "that is an owl." The Englishman became angry and said, "We know it is an owl, but what the 'ell is he 'owling about?"

So I believe that, in fairness, the representatives of the different states, in coming together as they do here, should take the situation as a whole, and not as applying to their own state.

There is considerable confusion in everything on earth today. Governmental problems and politics are getting more aggravated all the time; and while that situation has been undermining inheritance taxes, it has been secretive, but today it is beginning to come to light and getting publicity, as your Chairman so ably brought out.

A decedent with securities in several states is up against a serious problem, especially if they are located in certain states. I suppose a non-resident being a common enemy, a good many of the states feel that there is a good chance to get some money for "our state," thereby relieving our own inhabitants, our own residents, and reducing their taxes. To my mind, this is a fallacy, which can be proved if you will look into the taxation laws of the different states, because while your state is taxing non-residents, another state is doing the same thing, so that you have to take into consideration as to whether you are really benefiting your own people or not.

Taxing securities of non-residents is really, as has been said, a rule of might, instead of a rule of right, because where it has been tested out in some of the states, I believe the court decisions have been against the state applying the tax.

It would seem an equitable way for a state to levy the tax upon the estate at domicile, in the case of securities, and in the state of location, in the case of real estate. I believe in inheritance taxes, I believe that it is an equitable way of raising taxes, but I cannot see where it is a proper thing to burden an estate.

I was talking with one of the senators when the new tax bill was being started in Washington, in reference to the estate tax, in reference to the increase in the rate. One of them in particular was very bitter and almost spit in my face when he talked to me. He says, "What do we care for the dead man? He is gone; he cannot kick; we can take all of his estate if we want to." That is hardly an American attitude, I believe, and it is surely not equitable taxation. As your Chairman has brought out, it is a levy on capital, and while I feel as he does, that it was not the cause of the fall of Rome, and that this country will not go to the dogs, because we have inheritance taxes, still I do feel that in levying on capital, in drawing from capital as we do, and using it for the expenses of the state and government, you are causing men who have considerable capital, to reflect on the situation, and naturally, as they are doing today, as any trust company can tell you, they are inquiring where best to put their investments, where best to place their capital.

It will affect the different states if capital will be drawn out of those that are considering the heaviest taxes. That probably would only result in waking up some states to what they are doing, in driving capital out, and in the end cause confusion in trying to get back to normal, straightening out that situation. Therefore, I do not feel that any serious effect will come from it, only that when we do begin to realize it generally, the states will begin to clamor for the most favorable legislation, something along the line of what your Chairman has brought out as to the State of Florida. I be-

lieve the only other state that has no inheritance tax is Alabama. Florida undoubtedly is throwing out lines for capital to come into the state. I have been told—whether it is authentic or not, I do not know—that one of the particular interests desired is the Rockefeller interest, in the State of Florida.

Professor Belknap in the article that he referred to did show where an estate of ten million dollars could be confiscated to the extent of 304 per cent, instead of 290, as he stated.

CHAIRMAN BELKNAP: I did not allow for the federal end of it.

MR. DUNN: Well, it does not make any difference, as long as it is over 100 per cent. I do not know where they would get the balance. Some say, why, it is impossible. It is not impossible. It is improbable, but to a certain portion, those rates are very possible. In that case, where it comes to confiscation, where this thing grows, one state would be fighting against another as to how to proportion the 100 per cent; so you can see that a serious proposition could arise in the various states. Of course, the one that had the first hold and the greatest hold upon the estate could demand theirs first, I suppose. It probably would have to be worked out in legislation. But it does seem to me that with as important a body as the National Tax Association; with so many representatives from the states; there is no reason why they cannot get together, cannot harmonize their thoughts and be able to present the thing one-minded to the outside and go out and do some real good for the country at large. We do not want to look simply at the question and say, "Oh, well, it is the wealthy man," and "This is only affecting the wealthy man or a wealthy estate." Take into consideration that in the year 1916, when the estate tax first came out, the maximum was only ten per cent. Today the maximum is forty per cent. It has been the experience in all legislation of that kind that they place it low, to make it attractive and to get the entry. When entry is made, then they begin to reduce the exemptions and increase the rates, so that in time it gets down to the common people, the same as your income tax, which was very insignificant in 1913, when passed, and which today reaches almost every one in this room.

Another difficulty, possibly one of the greatest difficulties that come to trust companies in settling estates, is the requirements made by the laws of the different states. We have had experience with an estate that was very small in having to get a waiver from another state in order to transfer some securities, in fact, one share of stock. It took us over a year's time to comply with the requirements of the state and get the waiver in question. As I recall, the expense was forty-some dollars in getting that transfer, and it was finally determined that the estate had no tax to pay.

That is only one example of a good many. There is the requirement for a copy of the will; the complete assets and liabilities of the estate, and all the voluminous records that go with a large estate; a report of the directors' meeting, if there was any held, and I could go on with several requirements in the case of non-residents.

The state, I believe, takes this position because it has no control over the person of the administrator or the executor of the estate, and therefore holds on to the transfer agent. It is different in the case of a resident, where the state can have control over the representative. In doing that, you can see that there are serious questions that might arise as to delay. Why would it not be possible to have a uniform rule, whereby recognized and responsible trust companies could enter into some agreement, by the placing of a bond or a sufficient guarantee, to insure that the details would be worked out later on? Why would it not be possible to arrange a plan of that kind so that estates could immediately go on with their administrating and distributing? There would seem to be no danger, and it would be only a little bit of the milk of human kindness extended to those trying to close estates.

Another point that we have had considerable difficulty with and are beginning to have more of, is the requirement of some states for taxation on deposits to the credit of non-residents. This absolutely ties up the liquid element, the liquid part of an estate, and in some cases has worked a hardship, due to the fact that the payment of the tax to get the proper discount, and so forth, could not be made. New York, I believe, has eliminated this tax, and I hope that some of the other states will follow their example, in a different way than they did in the taxing of non-residents on securities of New York corporations. You will remember New York started that legislation. The other states failed to follow, and I believe in 1919 New York went back to the old rule.

In the case of taxing deposits to the credit of non-residents, why could not a deposit of cash or securities be made by trust companies, or why could not taxes be paid in excess of what you know they will be, in order to relieve the estate, so that they could have this liquid part for immediate use? The state would be running no risk in a case of that kind, and if the taxes were paid in excess, the refund could be made later, when the details were worked out.

These are the greatest problems that come to us from state inheritance taxes. There are many, of course, in connection with the estate tax portion of the income tax law of the Government. There are some peculiar angles in the new law that has just been passed. While in Washington last week I was talking to the Chairman of the Rule and Regulations Committee, and asked him in reference to section 204 (a) (3). He simply threw up his hands and said, "I don't know any more about it than you do."

This is from a committee that is now working on the regulations which are supposed to be publicly distributed by October 15th.

He also made the statement that this last law is the most complicated law that ever was brought before the committee. Take, for example, how pleasant and how nice it sounds to say that there is a 25 per cent reduction on account of the earned income, as against unearned income. That sounds very good to a salaried man, and he figures he is going to have considerable reduction in his tax. However, the minimum is placed at five thousand and the maximum at ten thousand, so that the greatest benefit any one person could possibly get under that law is seventy-five dollars, in the case of a single man. Most everyone will get the benefit of twelve and one-half dollars on account of the minimum of five thousand dollars. This portion of the law that reads:

> "If the property was acquired after December 31, 1920, by a transfer in trust, the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer was made." (Sec. 204 (a) (3))

That would seem to imply on its face that if you had property to sell that was going to bring you a great profit, and you were afraid of the tax, you could create a revocable trust, and that the property would take the value at the date of transfer, the trust company could sell the property at a very little profit, and the government would lose all their tax. When I said that, he said, "Oh, no, that is impossible; the government never would rule that way"; so he hung his decision on the words "recognized to the grantor," and especially on the fact that it is found under the heading of "Basis for Determining Gain or Loss, Depletion and Depreciation," implying that if the property to be sold is a building, it would be reduced by the depreciation or increased by the appreciation that was allowed in your income tax reports in previous years.

The very next clause states that if the property was acquired by gift or transfer in trust on or before December 31st, 1920, the basis shall be the fair market value of such property at the time of such acquisition. That clause he could not get away from. He admitted that a revocable trust created prior to December 31st, 1920, would have a basis of cost for any property sold, as at the date of transfer, there seeming to be a slip in not making reference to the estate tax section, as the previous clause does.

An added problem that is coming to us from the government is the gift tax proposition. That, like all the rest, has started without much show, on account of the exemption being fifty thousand dol-

lars. However, in working on that with the committee, at the time the legislation was being considered, we presented the fact that the greatest detriment in the passage of the gift tax would come to charitable organizations, churches, hospitals, and so forth, on account of the fact that they are required to report all over ten thousand dollars. It does not mean at one time, but it means the aggregate gifts for the entire year.

We were representing the Chamber of Commerce and charitable institutions, and in the final passage of the bill that was corrected by leaving out the ten thousand dollars, and making fifty thousand dollars the point for making the report. This is simply commentary, as I was saying, and there is no assurance, if the courts uphold this law, that it will not go back to the lower figure, and even lower figures, affecting all of us. Because, if it reaches that point —and it will not take much to reach it in the case of the wealthy man, if he has to pay a tax on what he gives to his son, in starting him in business, or what he gives to his children in dividing his property, or what he gives to his wife for maintenance and support, or for her own pleasure—they naturally are going to approach the proposition of giving to charitable organizations, even though it is free of tax. It will be a very common expression, a very common thing, to say, "If I cannot give to my own, without paying the tax, I surely will not give to a charitable organization"; or else he will reduce his contribution by that extent.

So you can see there are plenty of problems before us as to the gift tax. Personally I feel that it will be declared unconstitutional when it reaches the courts, especially that portion of it which is retroactive to January 1st. I think that is very clearly covered in the Frick case, which shows that property that is not in the hands of the owner cannot be taxed.

You can gather from this that if there is not a mess at the present time, there is a coming mess, if things are allowed to go on, and I believe that this ball of string, which seems to be messed up, can be straightened out by an organization of this kind, if we get together and work out a set plan and unravel the ball of string, having one end in one state and the other at a common point, so that it will work for the benefit of all. Possibly it could be worked out if the Government would do the levying of the tax and equitably distribute the proceeds among the different states. I do not know whether that would be possible, but if some plan that would be satisfactory could be worked out, I am sure you would be working not only for your own state, not only as one man, but you would be working for the common good of all. I thank you for your attention.

CHAIRMAN BELKNAP: It has been customary to have a discussion as to each paper. I think I am going to be arbitrary this

morning and get through with the papers, so as to have a more informal discussion this afternoon. I believe that after the papers have been read we shall have outlined before us the problems we are attacking, so that the discussion will be more to the point. I am therefore going to rush right on, and ask Mr. Miller if he will read Mr. Handy's paper on the "Effect of Recent Decisions on the Taxation of Non-Resident Estates."

I am very sorry that Mr. Handy cannot be here. He wired he was sick, and I know you are all sorry he is laid up.

(Thereupon Mr. Miller read Mr. Handy's paper, which is as follows:)

EFFECT OF RECENT DECISIONS ON THE TAXATION OF NON-RESIDENT ESTATES

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We have during the five years just passed heard much of the radical legislation, involving the imposition of death duties, placed upon the statute books of the various jurisdictions. We have, however, heard much less of the action of the courts operating to curb this radical tendency and to create a sane and conservative administration of these laws.

There has been a tendency during the last couple of years to paint the death tax as a monster of enormous proportions and outrageous appetite, created solely for the purpose of devouring the estates of widows and orphans. Much may truthfully be said against it; it has many defects; it is in great part unscientific; frequently economically unsound; usually badly administered; often works great hardships — but not as great as some of the writers in the popular magazines would lead you to believe—and yet it has its place in the economic system of the world. Multiple taxes are both an aggravation and an injustice, and it is this very tendency to impose multiple taxes which is today being curbed by the courts.

I cannot coincide with the views of my friend Mr. Doyle, who told me the other day that all the property which a man leaves should go to the state, because a lively expectation of inheriting a large amount of property is apt to create a young bum, and then to illustrate his point he said that a short time before he had, on meeting the son of a valued and wealthy friend, inquired after the health of the young man's father, and had been told in reply that the darn old codger would never die. Isolated in-

stances are, however, dangerous weapons and this case can no more be cited as typical in favor of inheritance taxes than can some of the cases of estates impoverished and ruined by these imposts be regarded as a final argument against all death duties.

It may perhaps be noted that I use the word death duties in preference to the more common but less accurate term inheritance tax. An inheritance tax is but one species of death duty, while this latter term includes as well, estate taxes, probate taxes, settlement taxes and several other like imposts.

I hold no brief for the inheritance tax, which is natural, as in my own practice I am usually found arraigned with the powers opposed to its enforcement, although I am mindful of the fact that if death duties were abolished, it would result in a drastic revision of my personal budget.

While the courts have rendered many decisions of doubtful meaning and questionable soundness, yet as we review the leading cases in regard to death duties decided during recent months, the conclusion reached is that the record in general is a commendable one.

It is not my purpose in this paper to analyze the issues in each case from the standpoint of the lawyer, but rather to consider the general trend of case law as it affects inheritance tax legislation.

It is, I believe, generally conceded that the case law of a sovereignty is of at least equal importance with statutory enactments, and therefore the trend of recent decisions is worthy of careful study.

There has in recent years been a marked tendency on the part of legislative bodies to extend the scope of death taxes, so as to include the property of non-residents located within the jurisdiction of the taxing state. The term "within the jurisdiction" is the one around which our interest must now center. Undoubtedly, if the property taxed is within the jurisdiction, the tax is lawfully imposed. Real property, for practically all purposes, has a situs only where it is located, and this principle, borrowed from the common law, has remained unchallenged down to the present day. The question as to under what conditions equitable conversion is worked and as to when a lease is real and when personal property is not relevant to the discussion, and will, therefore, not receive consideration here.

All personal property, according to a legal fiction, follows the domicile of the owner and is deemed to have its situs at his legal residence (domicile), hence the almost universal rule has prevailed, in the United States at least, of imposing a tax upon the transfer of tangible personal property of a resident decedent, irrespective of where it is physically located. This clearly defined issue was presented to the Supreme Court of Pennsylvania in the

Frick case [1] which answered in the conventional manner, and the question is now awaiting determination by the United States Supreme Court. The Frick case seems to have attracted unusual attention by reason of the large amounts involved and also because of the numerous parties seeking to intervene as *amici curiae*. The Supreme Court of Pennsylvania, referring to this tangible personal property, noted that "everyone concedes that these assets cannot be taxed by this commonwealth; they are incorporated into the great body of property of other states, and, by reason thereof, are necessarily subject only to their laws and their statutes," but the court proceeds to demolish the theory of the taxpayer that only where the taxing power is in a position to accord protection or otherwise benefit the person or property taxed may an inheritance tax be imposed, by the adoption of the theory that "the state-given right of transmission" may be said "otherwise to benefit" those contesting the payment of this tax.

If but one jurisdiction could impose a death tax, no reasonable objection to the holding in the Frick case could be made, but it is because several sovereignties claim taxing jurisdiction over certain species of property that there is a deep-rooted and entirely justifiable objection to the imposition of multiple death duties on the same item of property. Certain of these imposts seem to rest upon a basis of reason, others are entirely indefensible from the standpoint of logic. One favorite device of rapacious law-makers was to impose a tax on transfers of stock of a foreign corporation, owned by a non-resident decedent, simply because the corporation had assets in the taxing state. This was the only jurisdiction claimed, but this assumed jurisdiction was sufficient to induce several states to attempt the imposition of such a tax. Among these states were Wisconsin, Montana, Oklahoma, Arkansas, West Virginia and even New York. I use the word "were" advisedly; the majority of these states no longer impose this tax, not because their law-makers have had a change of heart, but because their highest courts have told them in no uncertain terms that the arrogation to themselves of such jurisdiction is unconstitutional and invalid. This method of taxation probably reached its highest stage of development in Wisconsin. It has been ably advocated and defended by my friend John Harrington of that state. The decisions of the courts in regard to the Wisconsin tax are therefore of particular interest. Two decisions involving this issue were handed down within the year. The first of these, known as the Tyler case,[2] emanated from the United States District Court. The State Inheritance Tax Attorney declined to follow it, and in

[1] *Re Frick,* 121 Atl. Rep. 35.

[2] *Tyler v. Dane County,* 289 Fed. Rep. 843.

fact treated it as of purely academic interest; he had forgotten that coming events cast their shadow before them. Then came the final blow, the state Supreme Court in the Shepard case [3] held with the United States District Court, and a portion at least of the structure on which Wisconsin had erected its death-duty law collapsed. In deciding the latter case, the court pertinently said: "We heartily concur in the state's desire to avoid multiple taxation, but it must be secured, if at all, by constitutional means. And unless concurred in by other states every additional method a state discovers to impose a legal tax adds to multiple taxation. But it is a question of power, not of policy."

In both these Wisconsin cases the principle that the transfer of stock of a foreign corporation, owned by a non-resident decedent, is without the taxing jurisdiction of the state, was upheld, in the Tyler case the court saying: "I am convinced that the mere relationship of a stockholder to a foreign corporation which seeks, gains, and continues in the right to do business and own property within the state, does not authorize the corporation effectively to give the shares of the stockholder a situs within the state. Viewed either from the standpoint of the corporation or of the stockholder, it follows necessarily that the state has never had that jurisdiction over either the shares or the decedent necessary to validly change the status of the shares from the distinct property of the decedent, independent of the corporation's property in Wisconsin, to represent an undivided interest in such property, having a situs within the state. * * * It follows that the transfer thereof may be fully completed without the slightest reliance upon the laws of Wisconsin, and that it was without jurisdiction to impose the tax in question."

Closely following the Shepard decision, both in point of time and in substance, was the Bankers Trust Co. case,[4] decided by the Supreme Court of Montana. Here too the court found that the legislature had attempted an assertion of tax jurisdiction which it did not possess. Here too is found an unqualified judicial statement that "the language employed in the statute indicates an intent and purpose to subject such property to an inheritance tax only when it is 'within the state or within its jurisdiction,' and that is as far as the law-making power could constitutionally go."

Continuing, the court said: "It was not the intention of the legislature to exact a succession or inheritance tax on property of the character involved herein, the situs of which is not within Montana. The intention clearly was to limit the application of the statute to such property of a non-resident as is physically within the

[3] *Shepard* v. *State,* 197 N. W. 344.

[4] *State ex rel. Bankers Trust Co.* v. *Walker et al.,* 226 Pac. Rep. 894.

state. The stock in question is wholly beyond the jurisdiction of the state for the purpose of exaction of an inheritance tax. * * *" It is to be noted that the court in this case emphasized the fact that the legislature did not intend to impose a tax upon the transfer of stock of a foreign corporation owned by a non-resident decedent, simply because such a corporation had assets in the state, yet if the legislature did not mean to impose a tax, which in the court's opinion is unconstitutional, by subdivision 4 of section 11 of the inheritance tax law, it is difficult to conceive just what they did mean, and it would have been far better if the court had flatly stated that this subsection was invalid.

The courts then have left little doubt that this tax on the transfer of stock of a foreign corporation is extrajurisdictional and beyond the constitutional power of the legislature to impose. Opposed, however, to the almost unanimous verdict is heard the voice of the judges of the Supreme Court of North Carolina in the Rhode Island Trust Company case [5] in dissent. The opinion in the North Carolina case was handed down within a fortnight of the rendering of the Shepard decision and in terms expressly refused to follow the Wisconsin case. This case was, at first view, only of academic importance, since prior to its commencement that portion of the statute which asserted this jurisdiction had been repealed. It had, however, a much greater significance than its local effect indicated. It was, in the first place, the first and only judicial utterance which favors the taxation of the transfer of stock of a foreign corporation, when owned by a non-resident decedent, and, in the second place, it will be carried to the Supreme Court of the United States, affording that tribunal an opportunity to express itself upon this important issue. The point of cleavage in the reasoning in the North Carolina case from the other decisions just referred to lies in the varying conception of the nature of a share of stock. In the former case the judge writing the majority opinion of the court said: "The legislature intended to put aside the fiction of separate interests between the corporation and its shareholders and to impose an inheritance tax upon the transfer * * * of the interests of non-resident stockholders in corporations" chartered elsewhere, where the corporation has property within this state. "Unless this view is to prevail, a corporation, created under the laws of another state, may come into North Carolina, with all of its property located here and protected by our laws, with its entire business carried on in this state, and yet the holdings of every non-resident stockholder would be exempt from our inheritance tax laws. It was the purpose of the legislature to prevent such a contingency or possibility."

[5] *Rhode Island Hospital Trust Co.* v. *Doughton*, 121 S. E. 741.

It occurs to me that the court in this case closely follows the reasoning adopted by Hon. Grant P. Hall, Tax Commissioner of West Virginia, in his attempted justification of this extension of taxing jurisdiction.

Another issue on which considerable stress has been laid recently is as to whether a state may impose a tax upon the transfer of bonds of a domestic corporation owned by a non-resident decedent. The right to tax the transfer of stock of a domestic corporation is conceded; it has the support of a long line of well-reasoned cases in numerous jurisdictions. The taxation of bonds has not received a great amount of judicial consideration. Bond dealers are however forcing the subject into the forefront of the argument. Of the two cases decided under the South Carolina inheritance tax law, one has held the transfer of the bonds of a corporation of that state when owned by a foreign decedent not to be taxable.

It is interesting to find the court in the course of its opinion remarking sagely: "But in the interpretation of a tax statute a state court, consistently with established canons of construction, may not soundly assume that, as to the makers of such a law—

> 'The good old rule
> Sufficeth them, the simple plan,
> That they should take who have the power,
> And they should keep who can.'"

The question as to whether the state had jurisdiction to impose such a tax was clearly evaded. The statute provided that the transfer of property within the state of a non-resident decedent was subject to tax, and the court decided that the bond was not property within the state.[6] At its 1924 session the South Carolina legislature made its intent very clear by specifically including bonds of domestic corporations among the items subject to tax, when held by non-resident decedents. The question then is again at issue in that state.

In Wisconsin the question in regard to the taxability of bonds was brought before the court in the Hill case.[7] Here too the court held that no tax could be imposed, but this holding was based on the very simple fact that the entire provision under which the tax might have been levied was declared void in the Shepard case, to which I referred above. The major question concerning jurisdiction to impose the tax is not satisfactorily answered in either of these cases. We turn, therefore, to the Lowell case [8]

[6] *Fuller* v. *Tax Commission,* 121 S. E. 478.

[7] *In re Hill,* Dane County Court; not reported.

[8] 203 N. Y. Supp. 312; (Aff'd by Ct. of App., Oct. 21, 1924.—Ed.)

in New York for a more clearly-cut pronouncement on this point. This decision, handed down by the Appellate Division of the Supreme Court in the spring of 1924, merits some consideration, as it is well considered and contains a very definite statement of the real issue.

In this case, Cornelia Prime Lowell, a resident of Massachusetts, had, at the time of her death, in her safe-deposit box in Boston, certain registered bonds, which represented the obligation or indebtedness of a New York corporation. The judge writing the opinion in this case said: "It seems to me that the provisions of the statute cannot be sustained, in so far as they impose a tax on bonds which at the time of the non-resident decedent's death were in another state, and not physically present in this state."

The court also takes occasion to intimate that the much-cited case of *Blackstone* v. *Miller,*[9] decided in 1902, is not applicable to New York State today.[10]

It is no secret that the New York State Tax Commission are much dissatisfied with this decision and are making a strong effort to overturn it in the Court of Appeals.

The general rule is that a taxing statute is not to be given retroactive effect and this principle has been enunciated by the courts in a long line of decisions. In some cases the general statement has been qualified to exclude cases where an intent to make the statute retroactive clearly appears. The exact issue was raised in a recent Montana case.[11] Here the statute, which was passed in 1923, provided for increased rates of taxation and attempted to bring within its scope not only the estates of all decedents who had died since its passage, but also all estates *remaining undistributed,* of decedents who died since April 1, 1921. The court decided however that "We have no special constitutional limitation prohibiting retroactive legislation and in the absence thereof the act in question must be sustained. Our codes recognize retroactive legislation, when, as with the statute before us, it is expressly so declared."

Unless the taxing act outrages all legal principles, there appears to be a general tendency on the part of the courts to give it such construction as will avoid unconstitutionality. This principle was recently affirmed in the *Matter of Spangler,*[12] decided by the Supreme Court of Pennsylvania last July, wherein the court said of one alternative: "As this is a possible construction, we are bound to adopt it, and thus make the whole of the act constitutional."

[9] 188 U. S. 189.

[10] See also *Cassidy* v. *Ellerhorst* (Ohio), 144 N. E. 252.

[11] *Rankin* v. *District Court of Silver Bow County,* 225 Pac. 804.

[12] Not reported.

To adopt this construction, the court found it desirable to state, purely as *obiter dicta,* however, that a transfer made in contemplation of death, where the title passed absolutely and unqualifiedly at any time prior to decedent's death, was not taxable under the Pennsylvania statute.

In this resume no attempt has been made to cover numerous interesting and important cases decided within the last year involving other features of the death duties laws. There are, too, several lower court cases pertaining to the problems at issue which I have not thought of sufficient importance to mention. I have sought only to touch the high spots and have chosen for consideration only those decisions which pointed to a definite trend in the attitude of the courts.

The dominant idea to be derived from a review of these cases is that the courts have perceived the evil resulting from, and have recognized the invalidity inherent in, many forms of multiple taxation and that the judges, having in mind both legal and economic considerations, have done their best to counteract the effect of the exhortations of soap-box orators and wild-eyed extremists in our legislative halls.

To a certain type of mind any wealth in excess of that which the owner of the mind himself possesses, is predatory and ill-gotten. This wealth, the mind reasons, should be taken by the state, despite the fact that the state will probably not use it wisely, and that its removal from industrial enterprise may result in disastrous economic consequences. Furthermore, death duties have been described as a painless tax, and perhaps they were a few years ago, when the general public scarcely knew what an inheritance tax was. What then more natural than a flood of legislation, mostly ill-conceived, designed in practice, if not in theory, to bring about the disintegration of a man's estate on his death!

Legislation gone mad conceived a thousand theories, on which to base a death tax. The fact that a corporation owned property or did business in the state; the fact that the securities themselves were physically located in the state; the fact that the corporation had a transfer office in the state; any of these, independent of any other consideration, were regarded as sufficient grounds to render taxable the transfer of securities of such a corporation when held by the estate of a non-resident decedent.

To catalogue all the possible grounds on which jurisdiction to assess death duties has been based would in itself unduly extend this paper and would serve no good purpose. The foregoing are typical.

This extremist tendency, as we have just seen, the courts have in the main very effectively checked. We can of course find many judicial utterances of which we disapprove; many opinions which

are illogical and ill-considered, but in general I think we shall find from the record which we have just examined, that the interests of the taxpayer have been given due consideration in the majority of recenty rendered judicial decisions. Of the future no man may speak with certainty. The conservatism of tomorrow may be the liberalism of today and the radicalism of yesterday. It is scarcely a quarter of a century ago that the idea was entertained generally that a progressive rate of inheritance tax was unconstitutional, yet outside of New Hampshire such an idea no longer prevails in our jurisprudence. But the present-day problems are ample to occupy this conference, and the possible problems of the future may well be reserved for another meeting of this association.

Chairman Belknap: We should now like to hear from Mr. Ralph Smith on the very interesting topic of the regulations of community property. Some may think that this applies only to California and the Western States. As a matter of fact, it applies more to us who are being taxed, while they are being let off, and it is for that reason that we are particularly interested in hearing from Mr. Smith, who is going to give a short resume of what has happened along these lines.

Mr. Ralph Smith (of California): Mr. Chairman, Ladies and Gentlemen of the Convention:

Coming to you as I do from the land of rose-blown, orchard-hued and mellow sunsets, unsurpassed in silent beauty, it is with a bit of diffidence that I address this conference, knowing that California, due not to desire but rather to distance, has not played the part in your deliberations in the past which we had hoped. You hold your meetings, as a rule, east of the Mississippi; that means three days and three nights from California. We have, however, noticed that there is no evidence of lethargy or apathy in your proceedings.

The subject assigned to me for discussion is the question of the status of the Federal Government on income and estate taxes on community property in California. I used the words "community property," the meaning of which is probably foreign to some few of you, as this system of property tenure is in use only in the southern and western part of the United States.

To a California spouse community property merely means dower, or rather a substitute for dower, as its definition, as expressed in the Code, indicates it to be the interest of the wife, or widow, in the estate accumulated by the marital partnership. The doctrine is based upon the theory that the husband and wife have together created the community estate.

The origin of the California community property law was the Spanish-Mexican civil law. We did not, however, adopt all its

principles. For instance: The Spanish law provided that the usufruct, or income of the separate property of the wife, should be community property. Our law has been influenced in this connection somewhat by the civil law, in giving to the income the same character as the capital estate. The California Civil Code definition of community property is one of indirection; section 162 reads:

> "All property of the wife, owned by her before marriage, and that acquired afterward by gift, bequest, devise, or descent, with the rents, issues and profits thereof, is her separate property."

Section 163 reads:

> "All property owned by the husband before marriage, and that acquired afterward by gift, bequest, devise, or descent, with the rents, issues, and profits, is his separate property."

Section 164 reads:

> "All other property acquired after marriage by either husband or wife, or both, including real property situated in this state, and personal property wherever situated, heretofore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in this state, is community property; but whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title is thereby vested in her as her separate property."

California, since its admission as a state (being a period of nearly eighty years), has had what we call the community property rule. That same system of property is adopted and found also in the states of Arizona, Idaho, Louisiana, New Mexico, Nevada, Texas and Washington. By this rule, as the definition would indicate, is meant that all property acquired by a husband or wife during their married life, except by gift or inheritance, or property which is acquired as a result of income, profits, or accretion to property which one or the other had at the time of marriage, is community property.

Under this system, neither husband nor wife acquires any interest in the property owned by the other at the time of marriage, or received during coverture, by gift or inheritance, such property remaining the separate estate of the particular spouse.

The process of determining the community estate is usually one of elimination, by finding first the separate property and deducting this from the total estate. Although having the appearance of being intricate and involved, we find the system simple, highly satisfactory, and not vexing to the field of business.

Let me give you this working example:

John and Bessie marry. At the time of marriage John owns one thousand shares of stock in the Sun Maid Raisin Company, valued at ten dollars a share. During the many years of married life Bessie faithfully looks after the home and John receives a salary of five thousand dollars a year as president of this company, and, at the time of his death, the stock which was worth only ten dollars a share at the time of marriage, we now find to be worth one thousand dollars a share. In John's estate we find only the one thousand shares of stock. His will disposes of all of this to a sister, leaving nothing to his wife. Is this disposition valid? In community property states it is presumed that the community earnings are first resorted to for family needs, therefore John and Bessie, finding ample in the five thousand dollar a year salary to meet their wants leave John's one thousand shares of stock undiminished, and as all income from or increase in value of separate property becomes the sole property of the owner of the estate, the stock, being John's separate property, the wife having no interest therein, as well as all income or enhancement in value from it, is subject to sale or testamentary disposition by the owner of such separate property, John.

The rule works the same in the case of the wife's separate property. During marriage, and at death, she also has the sole management and disposal of such property. Had John left community property, his disposition would have been limited to one-half of such estate, the other half going to the wife.

That brings me to the point directly in issue between the State of California and the Federal Government, namely; has the wife a fixed and vested interest in the community estate during marriage, or is her interest only that of an expectant heir? The interest of the wife in property can only be determined by the construction to be placed upon certain provisions of the California Code. The other seven community property states, by reason of vesting statutes and court decisions, have given the wife an undivided present and vested interest in the community property during marriage. But in California, prior to 1917, our community property statute gave to the wife only an interest in expectancy. Marital difficulties in California were known long before the discovery of Hollywood and the movie colony, for prior to 1860, in the case of *Van Maren* v. *Johnson,* 15 Cal. 310, the court said:

> "In the common property the interest of the wife is a mere expectancy, like the interest which an heir may possess in the property of his ancestors."

And since that time, in a long list of authorities concluding with the case of *Roberts* v. *Wehmeyer,* 218 Pac. 22, the Supreme Court of California has consistently held that even though the wife does

possess an interet in the community property and earnings during marriage in the other states of the Union which have adopted this system, in California she has no interest save that of an heir expectant.

In 1917, however, the codified law was amended, requiring the wife to join with the husband in the execution of any instrument by which community real property is transferred or encumbered, and the last California legislature, in 1923, added a new section to the code wherein the wife was given authority to dispose by will of one-half of the community property. The effect of these amendments are not known, as they have never been before the higher courts of the state for consideration. As to whether they are sufficient to change the wife's interest in the community is problematical. It is evident that merely a limitation on conveying property does not create an interest in property. The right, however, given by the last legislature to the wife to dispose by will of one-half of the community property is the creation of an interest in and the giving of a substantial property right, and it is by reason of a like authority in the statutes of other community property states that the courts have found the wife's interest in the communiy estate to be a present and vested one.

Therefore, although the courts have said that the wife did not possess an interest in the California community estate during coverture, prior to 1917, and it may be this same rule could be extended to 1923, by reason of an absence of legislative language increasing the wife's interest in the community estate, we cannot but feel that the amendment in 1923 to the Code, in which the wife was given the right to will one-half of the community, was a legislative declaration of a present fixed and vested interest in the wife, in one-half of the community property and its earnings. This statutory permit given the wife is not retroactive, therefore it does not warrant her disposition by will of any of the community estate possessed at the time of the enactment or of income or accumulation of such property.

There are certain fundamental concepts which distinguish the different theories of community property adopted by the states and it is necessary to differentiate the statutes, in order that we may discern the principal theory of our own law. It is the marked difference in the California statute from that of the other community property states that has caused the California courts to construe its law differently from the construction placed upon community property statutes by courts of other states.

In the State of Washington they have what we might term the entity theory, under which title to community property is vested in the entity, consisting of husband and wife, rather than in either one of the spouses. The states of Idaho, Arizona, New Mexico

and Nevada have the double ownership theory. Under this theory, both spouses own the property. In the State of Texas the theory of community ownership can be distinguished from the other states, in that it is a trust relation, the husband holding the title to the community property in trust for the benefit of himself and wife. Similarly, if the title to community property stands in the name of the wife, she holds it in trust for the benefit of her husband and herself. In California we have the single ownership theory. Here the husband has the sole control and management of the community estate, can dispose of the personalty, other than by gift, without considering the wife, and is limited in disposition of the realty only by the amendment of 1917, to which I have just referred.

In the community property states, other than California, the Federal Government, for taxation purposes, has recognized a vested interest in the wife in one-half of the community property, as well as the income and profits to such property. Therefore, in these seven states, upon the death of the husband the wife succeeds, by reason of previous vestiture, to one-half of the community, free of federal estate tax, and during coverture, the Federal Government accepts separate income tax returns from the husband and wife, each for one-half of the earnings of the marital partnership as well as the income and profits to community property.

By reason of the Federal Government's failure to extend this rule to California, California taxpayers maintain that they have been overtaxed to the extent of one hundred and thirty millions of dollars.

Therefore, the question assigned to me for discussion is economic, political and legal.

It is economic in this, that if the position which California has assumed prevails, of being classified by the Federal Government with the other community property states, thus for federal estate tax purposes each spouse upon the death of the other being required to report only one-half of the community property for taxation, and also being permitted to file separate income tax return on one-half of the community earnings, the Federal Government will be asked to refund to California taxpayers the one hundred and thirty millions of dollars collected, by reason of its failure in the past to extend to California the same privileges which have long been recognized as fixed rights in the other community property states.

The question is political, by reason of the pressure today as never before by the American woman for added recognition, for the provisions of the California Code, which have to do with community property, have been amended many times since 1917. The changes, as a rule, were to take from the man control over property, and in some instances an effort was made to divest him of a fixed interest

in the common property. The amendments gave to the women of California added rights, and a greater voice in the community estate, while in the half-century prior to that time there were few, if any, amendments to our community property law.

The subject of community property is so comprehensive that I will not deal with the political or the economic phase of this question, for I am sure that if I should get into these fields I should trespass upon the time of the next speaker. Therefore, my discussion concerns only the legal phase.

Prior to 1917, for inheritance tax purposes, no exemption in the community property was recognized, upon the death of the husband. The failure to exempt one-half of the community estate to the widow was questioned without success in the Supreme Court of California in *In re Moffitt's Estate,* 153 Cal. 359; 95 Pac. 653, which case was appealed to the United States Supreme Court and there sustained in the case of *Moffitt* v. *Kelly,* 218 U. S. 400, holding that the nature and character of the right of the wife in the community property, for the purpose of taxation, was peculiarly a local question, thus concurring in the long-established custom in California of taxing the widow as any other heir, upon succession to the community. The soundness of this decision of the United States Supreme Court is beyond question, although it warranted the Treasury Department, for taxation purposes, in establishing for California taxpayers a procedure abhorrent to the path of justice and right, uniformly recognized in the other community property states, wherein one-half of the community estate was recognized as belonging to the wife, by reason of the equal part she played in its accumulation with her husband. Due to this apparent injustice to the widow, the California Inheritance Tax Department submitted to the Legislature in 1917 the following amendment to its act, which was favorably acted upon:

> ". . . . that for the purpose of this act the one-half of the community property which goes to the surviving wife on the death of the husband, under the provisions of section one thousand four hundred two of the Civil Code, shall not be deemed to pass to her as heir to her husband, but shall, for the purpose of this act, be deemed to go, pass, or be transferred to her for valuable and adequate consideration and her said one-half of the community shall not be subject to the provisions of this act; . . . ."

Therefore, since 1917, for California inheritance tax purposes, upon the death of the husband the one-half of the community property which belongs to or passes to the widow is exempt and free from death duties. In addition, the widow is allowed a personal exemption of twenty-four thousand dollars in any other portion of the estate willed to her or which she receives as beneficiary.

We believe this to be the most liberal exemption allowed to a widow by any state in the Union. Contrast these exemptions, if you please, with those of Illinois, North Carolina and other like states which tax dower. In California, the wife dying intestate, the husband succeeds to all the community property free from inheritance tax.

Conceding that there was no vestiture of title in the wife prior to 1917, it has been most vigorously urged by leading lawyers of California that the law cannot change the character of an interest in property for one purpose alone and therefore the amendment to the Inheritance Tax Act created an interest. In opposition to this it has been advanced that the Inheritance Tax Act's exemption is specifically limited to that Act. Application was made for refund of taxes paid to the Federal Government on the community interest. The United States Circuit Court of Appeals in the case of *Wardell* v. *Blum,* 276 Fed. 226, which carries a very elaborate and logical dissenting opinion by Circuit Judge Hunt, held that the amendment to the California Inheritance Tax Act effectuated a change in the law for all purposes and therefore the interest of the wife in the community after 1917 was present, fixed and vested, and therefore the wife's interest in the community should not be included in the computation of the federal estate tax.

A writ of certiorari on the part of the government was denied by the United States Supreme Court in the Blum case on March 6, 1922 (258 U. S. 617). During all this time there was pending in the higher courts of California the case of *Roberts* v. *Wehmeyer,* which presented a kindred question to that involved in the case of *Wardell* v. *Blum.* Therefore, presumably by reason of its dissatisfaction with the conclusion of the United States Supreme Court, in failing to allow its writ of certiorari, and also hoping for a favorable decision from the Supreme Court of California in the case of *Roberts* v. *Wehmeyer* and desiring this decision, before a final conclusion of the Blum case, the Government, on March 30, 1922, applied to the United States Supreme Court for an order revoking its previous order denying the petition for a writ of certiorari. This motion remained undecided on August 17, 1923, when the Supreme Court of California rendered its decision in the case of *Roberts* v. *Wehmeyer,* holding that prior to 1917, the wife had no interest in the community during marriage, but succeeded to the same only as an heir. The effect of this last word from the Supreme Court of California on the problem is unknown, as the Federal Government on October 22, 1923, petitioned the Supreme Court of the United States for leave to withdraw the Government's motion to revoke the order denying the petition for writ of certiorari, thereby leaving the judgment in the case of *Wardell* v. *Blum* a final conclusion of that proceeding and warranting the United

States Treasury Department in taking from its coffers the sum of one hundred thirty million dollars to reimburse Californians for taxes, both inheritance and income, which have been illegally collected.

Thereafter, on March 8, 1924, Mr. Daugherty, Attorney General, upon request for an opinion from the Secretary of the Treasury, advised that the interest of the wife in California community property was not a part of the property of the deceased husband. Upon the succession of Mr. Stone to this office on May 27, 1924, this opinion was recalled. The matter therefore is now being held in abeyance, awaiting a pronouncement from Mr. Stone. In the meantime husbands in California are confronted with the anomalous situation of being forced by the United States Treasury Department to make sole returns on all community earnings and upon death their estates must pay a tax on the whole of the community estate, notwithstanding the final word from the United States Supreme Court to the contrary.

Heretofore a net California estate of one million dollars, upon the death of the husband, has been subjected to a federal estate tax of fifty-one thousand five hundred dollars, the same sum a life estate will pay in New York, Ohio or any other state which does not operate under the community property rule. By authority of the decision in the case of *Wardell* v. *Blum*, when followed by the United States Treasury Department, such California estate will be subjected to a tax of only thirteen thousand five hundred dollars, and in income tax the saving will be even more pronounced. The division of the income and earnings being equal between the husband and wife, the making of separate returns will tend to avoid, in many instances, any surtax and in every case prevent the taxable income from reaching the higher progressive rates.

Community property states stand as a favored class for federal tax purposes. Mr. Mellon, Secretary of the Treasury, recommended to Congress that recognition of the splitting of earnings in community property states for income tax purposes be no longer recognized by the United States Government. It is apparent that this would be a solution of this unsettled problem. It has its merits, in that it would place all the states in the Union upon a similar plan, with uniform collection of federal revenue, but we are not certain that the abolition would not violate a constitutional right.

CHAIRMAN BELKNAP: I am sure that we all feel that it has been worth while having Mr. Smith come from California. I think that is one of the most interesting addresses I have heard at any tax meeting. We have one more paper.

MR. HART (of Louisiana): I should like to know if this is coming up for discussion at any time?

CHAIRMAN BELKNAP: We are going to discuss everything this afternoon. Maybe we shall get through in time to have the discussion this morning, but I want to have the papers read before we get off on sidetracks and lose the really valuable effect of having them.

I am going to ask Mr. Vierling to read his paper on safety vault examinations.

MR. FREDERICK VIERLING (of Missouri): Mr. Chairman and gentlemen: As a citizen of St. Louis, I wish first to extend to you, ladies and gentlemen, my cordial welcome. We are glad to have your association meet with us in our city, and we hope to see you again, and hope that you will have a good time while here. If there is anything we can do for you, let us know, and we are on the job.

At the request of your Chairman, I appear before you to talk on a phase of the safety deposit business that seems to have more or less contention in it, that is, the impediments to access to the safety deposit box of executors and administrators of decedents. When I say impediments to access, of course I refer to the first access, not after the box has been turned over to an executor, but after the decedent has died, when the legal representative appears and wants to make an inventory and take charge of the contents. In many states he is prohibited from doing so, without some formality.

Under the general rule of law executors and administrators, as soon as they were appointed, had the right to come to the safety deposit box of the deceased and claim the contents. That was done in the presence of those appointed to make an inventory, but usually of members of the family also. As soon as an executor proved his authority, which would be by presenting court papers, he was allowed access. No question was raised on the part of the safety deposit company; they had no right to resent it; they were glad not to resent it. In states where there are now no inheritance tax laws, like Florida and Alabama, the general rule still applies. There is no impediment also in about twenty-one other states, where they have inheritance tax laws. There is no provision that ties up a safety deposit box; so that in those twenty-one (more or less) states access is readily had.

As you all know, under the federal inheritance tax law there is no impediment, so that as far as the government is concerned, it does not place any responsibility on the safe deposit company. The government looks solely to the legal representative, executor or administrator, for a proper report as to taxable property. That is as it should be.

An executor or administrator is appointed by the court, under the law, to take charge of the assets of the decedent. He has full responsibility and no safety deposit company or other institution

that happens to have control of the assets of the deceased are looked to, but that is not true in all of the states.

In about twenty-five states access is prohibited — the original access—until some formalities are complied with. Delay is occasioned from three days in Louisiana to thirty days in Kentucky. In most states it is ten days. Ten days' notice is required, not from the executor, but from the safety deposit company, that so-and-so has died and his executor or administrator wishes to have access. The company gives the taxing authorities notice that access will be permitted on a certain day, and for them to be present.

Now, in states where there is a local representative of the taxing authorities, like the county treasurer or county auditor in each county, where he is handy to the institution and can readily appear and go to the box with the representatives of the estate, the delay is not extreme, but in some states, where there are no local assistants to the taxing authorities, as is the case in Missouri, the delay is too long.

Most of the states have adopted the text of the New York act in respect to this matter, but Missouri omitted the provisions that relate to a local representative in each county or city.

Now, when the law was first enforced here, only a few years ago, a great deal of difficulty was experienced. The companies would notify the taxing authorities at Jefferson City that access was desired, and would ask them to please have a representative present. The answer came that the legislature saddled this new expense upon the tax department, but forgot to provide an appropriation to cover this extra expense, and they could not come and go at the will of the companies that needed them, and some other arrangement would have to be made. At first they requested that we accumulate our requests for access to boxes and they would come down every so often. Well, that was not very cheerful. Too many deaths take place in a large city, and too many boxes got tied up in a short time, so that there was dire confusion.

The institutions in St. Louis got together and made the suggestion that if the state authorities would appoint a local representative, they together would pay the salary of this representative, provided it was a modest one, and have him on the ground to let us notify him whenever the occasion arose to have access, but the taxing authorities properly said there was no provision in the law for the appointment of a local representative, and they dared not do it; so that effort failed. Numerous conferences were had, to get by. Finally the suggestion was made that if, in certain cases that we all had pressure on, they would give a conditional waiver, so as to permit an officer of the safety deposit company to accompany the executor, and members of the family, if they desired to be present at the opening of the box, we would undertake in these

individual cases to make an inventory of the contents in duplicate and send a signed copy to the tax authorities at Jefferson City.

They gave those consents to see how they would work. They worked then and they are still working. The tax authorities did something there was no warrant in the law for, but necessity compelled action; so that now in Missouri we are on that basis. When we notify the tax authorities of the death of a renter, they send in a conditional waiver; then access is provided; an inventory is made, and a signed copy sent in. In a way, that is not fair to the safety deposit companies, because it puts a responsibility upon them, and it puts an expense upon them that they ought not fairly to bear.

Rents for safe deposit boxes are nominal. As you know, most of them are five dollars a year, and it is some responsibility to have this work put upon an officer of the institution, as well as the clerical work that goes with making an inventory. Until we have local representatives, I suppose we shall have to grin and bear it.

In other states, where this local representative is near the institution, especially in the county seats, it is no trouble, or not much trouble. I hope that at the next session of the legislature we shall be relieved of this responsibility. Of course, we do not know.

Now, in connection with safe deposit boxes, where right of access is given to attorneys in fact, agents or deputies, co-tenants or joint tenants, the situation is not as bad as it is elsewhere. In Missouri and most other states, when an attorney in fact dies, or an agent dies, or a deputy dies, it does not tie up the box of the principal. The principal has access, as he should have, without regard to the fact that somebody who represented him has passed on.

In connection with boxes held as co-tenants, that is true theoretically, although practically all the institutions follow the rule that when one of the co-tenants dies, the legal representatives of the deceased must appear and the living co-tenant must appear. and jointly they go over the box for the first time, so that the remaining tenant and the representative of the decedent may protect their respective interests, if they need protection. Usually there is not much trouble at that point.

Formerly it was quite a custom for customers to rent safe deposit boxes as joint tenants, with the idea that on the death of one the access should be solely in the survivor. We now tell all applicants for that kind of a box what the situation is under the law, and recommend that they do not attempt to carry a box as joint tenant, that if they have individual assets it would be better for each to have his own or her own box, with the other merely as agent, to have the right of access, instead of as a joint tenant.

The adoption of the inheritance tax law, therefore, as it is now in Missouri, has made a change in our practice.

In California and in Kentucky there are provisions in the in-

heritance tax law to the effect that where a box is rented to a principal and to an attorney in fact, an agent or deputy or co-tenant or joint tenant, at the time the contract is entered into, they must all agree that on the death of any one of them, no other will have access, and that notice must be given to the tax authorities and access had only under waiver, as if the principal himself or herself had died. That law, I think, is too extreme.

If I have a box and appoint someone as a mere agent, when he dies I resent the law going to the point of telling me that my property is tied up; that I cannot deal freely with it; that I have to divulge my property affairs to outsiders, who, according to the record, have no interest in the contents of the box. The box is in my name, I am the principal; what are in it are my assets, and no one else should have a right to pry into my affairs on an occasion like that.

Louisiana has a somewhat similar law, though not as extreme as in the cases of California and Kentucky. Of course, under laws like that you all know in advance that the law exists and you at your peril appoint an agent or a deputy, because you are bound to recognize that if anything happens to him it involves you. Fairly, it should not.

Now, in New York I find that where a principal dies and the family want to get hold of the will or cemetery lot deed, application is required to be made to the court for an order on the safety deposit company to permit the withdrawal of the will or to permit the withdrawal of the cemetery lot deed. I resent that amount of legal formality to do something as innocent as that at the time of death. Of course, no general access is to be had, in any event, under any law that I know, but under the practices of the various states, permission is granted by the taxing authorities to look into a box to search for a will, if any, and carry that to court, or to search for a deed to a cemetery lot. It is made a condition that safety deposit companies allow nothing else to be disturbed, and that is the practice—looking for what is needed at that urgent time, and nothing is disturbed.

Why place the safety deposit company in the position of being a part of the tax-assessing and tax-collecting machinery of the state? Why not let the responsibility be where it ought to be, on the executors or administrators, who are appointed by the court, who are under bond, and who generally are under oath of office, and who really have and should have the responsibility?

I thank you.

CHAIRMAN BELKNAP: I suppose that everybody thinks his own fight is the most interesting fight there is. That paper was very interesting to me, because I was instrumental in getting the Ken-

tucky law passed, and I have been most thoroughly unpopular with some of my banking friends since.

I have had a sneaking suspicion that the unhappiness of the people, not of the safety vault people, but of the public renting safety vaults from the trust companies, was not all due to worry about what was going to happen after they die.

The law that I introduced was a model tax law of this association, which we drew up in solemn conclave, some two or three years ago. It passed word for word as it stands in our printed model tax law. I changed it not one whit, but we unintentionally put a "joker" in there, as I see it now, that has nothing to do with the tax. It is very easy to see that if I have a safety vault box in common with two or three other people, and on my death the state tax commission has a right to have a representative go through all the securities in that box, he may very readily unearth some securities belonging to a person still living, of which the state tax commission has not had sufficient reports in recent years.

Now that was entirely unintentional on my part, but I am just mean enough not to care if they do unearth some. I try to pay my taxes that I cannot get out of, without swearing falsely; and I have a certain prejudice in favor of other people doing the same, in order that my taxes shall not be any heavier than they have to be. So my own personal feeling about this provision with respect to safety vaults is somewhat tempered by that relationship to taxation in general, which has nothing really to do with inheritance taxation.

Like most other tax laws, it depends upon the people working them. In my notion, I am putting up a frank defense for this law we passed in Kentucky. We have a pretty good tax commission in Kentucky, and they have arranged for local representatives, and they have interpreted the law very generously, so I do not believe there is going to be any hardship worked under this law at all.

Having said that in my own behalf, I want also to say that Mr. Vierling has pointed out several new lines of thought to me, and I think if the people see fit to send me back to the state legislature next year, I shall try to amend the law in some particulars, but I am not going to take the teeth out of it if I can help it.

I am now going to throw the meeting open for discussion. I think that we should meet at two-thirty this afternoon. It is now twelve-fifteen, and we might have about half an hour's discussion now, if anybody feels like discussing the various papers. There has been so much that is interesting brought up that I know there will be desire for discussion. I should like to hear from the gentleman from Louisiana, as I shut him off before.

Mr. Hart (of Louisiana): Mr. Chairman, I am very glad to

have an opportunity to say something about Louisiana and income taxes.

The opinion of the Attorney General authorizing separate returns of husband and wife in Louisiana was the greatest travesty on Louisiana law ever perpetrated. I cannot speak for the other seven community states.

In Louisiana the wife has not the slightest interest in the community property, as long as the marriage exists. Her interest arises only in case of divorce or death. Therefore, when the husband dies, the wife owes no tax on her half of the community, because she is then the owner, and as this ownership arises at the moment of death, she owes no tax upon the part of the community property received by her. When the wife dies first, the inheritance tax on the one-half which belongs to her must be paid, but the other half is not taxed, because the interest of the husband therein is that of ownership.

In addition to that, there is a very liberal allowance to the wife in the inheritance tax law, of ten thousand dollars, but the main proposition I want to call your attention to is, that as the moment of death is the time when the inheritance tax is due, that is the moment of time when the interest of the wife accrues and not in her lifetime.

She may not dispose of five cents' worth of community property during the lifetime of her husband nor may she collect a community debt or give a discharge for it. The earnings of the separate property of the husband go into the community but the income of the wife does not go into the community, unless the husband administers her property, so that the community in Louisiana is apparently different from that in other states; the decision that the husband and the wife may make separate returns under the Louisiana law was due to some error of the Attorney General. The community interest of the wife is dispensed from inheritance tax when the husband dies first but the community interest of the husband in any event is taxed, in case he dies first.

Chairman Belknap: I should like to hear from some of the New York men, if they have anything to say.

Mr. Stephens (of New York): In New York we attempt to favor the estate as much as possible. We have a ten-day clause in our law. It is very seldom, though, that we put it into effect. Upon death, there is a provision that the surrogate issues an order for the withdrawal of the will or deed to burial lot. It is only in the large centers where this practice is carried out. The upstate surrogates, outside of New York, pay no attention to that provision. On receipt of a request for the opening of a box, we send the waiver direct to our representative. We have a representative

in each county, and it is usually up to the representative of the estate as to when the box is opened. If a request is received today, the waiver is at once sent to our representative, and he is ready at any time within 24 hours to open that box.

On joint boxes the same practice is followed out. If a power of attorney is issued, and one having the power dies, we do not require a waiver for the owner of the box to have access.

CHAIRMAN BELKNAP: Doesn't that open up one way that they could get out of it? What is to prevent me from appointing my wife attorney to go to that box and letting her keep her securities in it? In case she dies, I could go and get the securities out.

MR. STEPHENS: That could be done, but if she has any registered bonds, she has to come to us later on to transfer them, or if she has shares of stock standing in her name, she has to come to the department for an individual waiver; so there is not a great deal of chance of getting away with that property.

CHAIRMAN BELKNAP: I think a lot of people do not realize, in this safety vault matter, that the evasion and avoidance is just beginning, because the taxes are getting to the point now where there is some point in it. Up to now it was not worth taking a chance on.

MR. STEPHENS: The worst trouble that we have is where there is an envelope in the box; the box stands in the name of a decedent, and the owner says: "This is the property of John Jones or somebody else." We had one case where the widow of a decedent appeared at the opening of a box, and there were three envelopes in there, in the handwriting of the decedent, and it stated: "This is the property of my wife, but must not be delivered to her except in case of my death." She said to our representative, "Now, these envelopes, I know what is in them, and I don't want them inventoried; it is nothing that the State of New York has any interest in." She said, "They are little letters, and so forth, that I very foolishly have kept, and I don't think you ought to open those envelopes."

The representative had had only about three months' experience, and he said, "Well, I will have to find out what to do." I said, "Open the envelopes." They contained sixty thousand dollars in bills. The tax on that was quite a considerable sum in New York. That is what you usually find in those envelopes they do not want to have opened.

MR. MCKENZIE: May I ask the gentleman a question or two? Suppose the box is held jointly by the husband and wife, and the wife had securities in an envelope; is there going to be any question about her getting those securities?

MR. STEPHENS: We list them and transfer them at once, and the ownership is decided when the case comes up before the official appraiser.

MR. MCKENZIE: She would be allowed to take her securities and go off?

MR. STEPHENS: Not until it was opened by the representative of the state. It would have to be opened by the representative before we would allow her access to the box.

MR. GARY (of Virginia): How do you account for a situation of this kind? We had it arise several times in Virginia, under your non-resident law. Suppose a resident of Virginia owns stock in a New York corporation that was deposited in a safe deposit vault in Virginia; the stock stood in the name of the decedent, but it was in an envelope saying it is the property of the decedent's wife?

MR. STEPHENS: If it stood in the name of the decedent, we would require proof that it was the property of the wife.

MR. GARY: Do you take proof in non-resident estates?

MR. STEPHENS: Oh, yes.

MR. GARY: What do you accept as proof of that?

MR. STEPHENS: In the form of affidavit.

MR. GARY: You would accept an affidavit in that case?

MR. STEPHENS: Unless we are not satisfied, and then we have a hearing before the appraiser.

MR. GARY: That question was raised several times in Virginia, and I was wondering how it was settled in other states. In Virginia we decided we would go by the face of the bond, and not take any affidavits or any evidence at all.

MR. STEPHENS: We will take proof, and accept affidavits as to the ownership.

A DELEGATE: May I ask the gentleman from New York in what way the New York State Tax Commission has access, or the method of attack where the box is in the name of the husband and the property in the box is specifically marked, all of it? Assume it is in the name of the wife, and the wife dies; what method of access have they to attack that?

MR. STEPHENS: Under our statute, it would be the duty of the husband in that case to secure a waiver before turning over that property. Our statute covers an individual the same as a trust company.

A DELEGATE: Irrespective of the fact that the box is in the name of the husband?

MR. STEPHENS: Yes. If it is his own box, he has to give us a waiver to take the property of a deceased person out of it.

A DELEGATE: In the case of a partnership, when one of the partners dies, do you consider that a joint box?

MR. STEPHENS: We open that box at once, without waiting for administration. If they come to us, we send a man to list it and transfer the contents.

CHAIRMAN BELKNAP: I was interested in the paper of Mr. Smith of California. It brings out as clearly as anything could the awful chaos that this whole tax situation is in. I do not know whether any of you happened to notice the Indiana figures that Mr. Harrison got together. He broke his kneecap a couple weeks ago, and could not get here. He collected figures for just a short time as to who was paying the death taxes, and he found that the widows were paying practically half of the death taxes in Indiana. You have all heard about the profligate son on whom the tax falls, and how you are going to protect the son from inheriting too much money, and of all the evils you are going to save the children from, whereas really the widow is the person you are taxing. In those Indiana cases, he took four hundred odd estates, and fifty per cent of the tax was paid by the widows. That, to my mind, was a very interesting thing and I have always felt that the community property notion was the fair one in inheritances.

I put into the Kentucky law the twenty-thousand-dollar exemption, which I figured was all I could get through; but I think that paper of Mr. Smith's brings out dangers of the slight differences in laws and the way it works out.

I haven't any desire that my wife shall make up the deficit, if the California rich widows have had their inheritance money and do not pay on their community property end of it. I asked Mr. Smith to keep his paper short. If you have anything further to say, we should like to hear from you, Mr. Smith.

MR. SMITH (of California): In reference to the New York incident of finding 60 thousand dollars in bills, if we found 60 thousand dollars in bills in California, they just take it away, and there is no tax on it. As to the fairness of the law, in California we would cut that 60 thousand dollars in two right away, and say to the wife, "You worked with your husband, anyway; you helped earn his community property; therefore half of that 60 thousand dollars is yours." We start with high rates on the other 30 thousand, though. We allow 24 thousand dollars exemption, and there is only six left.

I think probably that in California the safety deposit box is more accessible to the executor than in some of the other states. Under our law the county treasurer is designated as the man who opens the safety deposit boxes. Our office merely advises. All the executor has to do is to go to the county seat and see the county treasurer, and the county treasurer immediately opens the box. As a rule the box is opened the same day or the day after death. They do not have to write to our office, or any place else. Our office may be four or five or six hundred miles away from where the death occurred—San Diego. There is absolutely no delay. In ten minutes they can have the box open and take out the stocks. We allow them any time to take out the will and the deed.

Mr. Gary (of Virginia): Does the county treasurer get a fee for that?

Mr. Smith: Yes, a certain per cent. The county treasurer collects all the inheritance tax, and he is allowed a certain fee on that.

Mr. Gary: Who pays that fee?

Mr. Smith: The estate pays it. In California there is not one bit of expense to the estate in the collection of the inheritance tax. It should be paid by the state that collects it. They make enough money on it. We collect in the neighborhood of seven million dollars in California, and if we had a law which did not allow such large exemptions to widows, we probably should collect a few million dollars more.

In one estate a father died, leaving a large estate of millions of dollars to his wife; within a year or two the wife died, and therefore we hit that estate, and the Federal Government hit it, within a period of something less than two years. We learned from that to put in our act a change that we would not tax property twice within five years.

One of the speakers here seemed to indicate that amendments or changes in inheritance tax are made by the legislature. That should never be. There has never been a change in the inheritance tax law of California that has been made by the legislature. I mean by that, that created or originated by the legislature. The inheritance tax department, which administers our law, is independent of the Attorney General and independent of any other branch of the state government, and we, as a rule, always suggest any changes. It has never been our plan to reach out and try to get hold of every item of property to tax. That is one of the great mistakes. I had an inheritance tax attorney write me from a state in the West recently, how we could tax the property of a non-resident decedent and of a non-resident corporation, which non-resident corporation owned valuable mining property in his

state. This man lived back East and owned valuable mining property in a Delaware corporation, and he wanted to know what provision of our law would permit the taxing of that. That same question was covered in Mr. Handy's paper. I wrote Mr. Handy that California had no sympathy with that kind of legislation. A good many states are getting more and more that way, not to reach out and get hold of every piece of property you can to subject them to an inheritance tax. We in California do not tax the property of a visitor or tourist. They bring in thousands of dollars. It is not uncommon for them to have one hundred thousand dollars there, and they may be there a year or a year and a half. We try to operate the department on a policy and on a system to help general business, rather than to get money. If we can bring property to California, it is going to help the general business of California, and that is better than getting a few dollars in taxes. That is our system.

Mr. Berry (of Michigan): I have an estate of a lady who, I will say, is temporarily residing in California. She died while there, and her securities, consisting of between 250 and 300 thousand dollars, are located in Detroit. The State of California required—and the institution with which I am connected is permitted to do business within the State of California—us to forward to the Superior Court of Los Angeles all of those securities located outside of the State of California. This woman was married. We paid a tax of something like 25 or 26 thousand dollars. We were required to qualify and file a bond of 200 thousand dollars, and we were also required to appoint an attorney who was required to file a bond at the instance of the state; the estate was about two years in being closed; the premium on our bond was about $600 per year, and we were required to file three accountings and pay two taxes on all of the property in that state, a tax to the State of California, and a tax to the State of Michigan, and several taxes on stocks.

The question that is interesting to me is, why California requires the presence within the state and within the jurisdiction of the court, of all of those securities at the expense of the estate, bearing in mind that the executor is authorized to do business in the state and had filed a bond of 200 thousand dollars. I tried to find out why that was required through our attorneys in Los Angeles and through other sources in California, and through the statutes, and I do not know yet; so I will appreciate if you will tell us.

Mr. Smith (of California): The case you are talking about had nothing to do with inheritance taxes. I remember that case very well. I will answer that plainly. It was a probate matter, and

the executor was a non-resident. We permit a non-resident to act as administrator in California, but do not permit a non-resident to act as executor; therefore, your company, being a non-resident, had to come in in the same manner as a trust company in California would act; you had to meet with those requirements. Most of the states require that.

The good lady you are speaking of was a resident, and that is the reason she paid an inheritance tax there. She should not have had to pay the inheritance tax in Michigan. There is where it was wrong. It was not our state that was wrong.

CHAIRMAN BELKNAP: I am glad this has come up, because one of the most vexing problems in our death taxation is this question of domicile. I happen to know in the Harkness estate that there were three states that claimed to be the state of domicile. Our friends from New York claimed it; my state of Kentucky claimed it and proved it, and California claimed it, but in the end the courts held he was domiciled in California.

MR. SMITH: Harkness had been all his life in California. We thought he was a resident there. We tested it out, and the supreme court of our state said he was a resident of Kentucky. Then Kentucky got busy, so it was taken to the supreme court of Kentucky, and they said he was a resident of New York. I don't know whether anybody got him or not. We did not get a penny out of it; I know that.

CHAIRMAN BELKNAP: I am glad you spoke of that; I am going to look it up again. At the time I had looked into it, they had paid the tax in Kentucky.

MR. SMITH: No; the Kentucky court held he was a resident of New York. I know New York held he did not reside there.

MR. STEPHENS: We taxed one as a resident of New York, and one they held as a resident of Kentucky.

CHAIRMAN BELKNAP: The Kentucky one is the one I am talking about. It may be that two of them died. It shows it pays to get a good lawyer in inheritance taxes, because one of the lawyers for the estate told me that if each of these three courts held that Harkness was a resident in each state, he would have paid in all three states, and there would not have been a way out of it.

That is one end of the inheritance tax tangle, that is very difficult of solution. That is one of the big arguments for the turning of the whole thing over to the Federal Government. That is not my view of the solution, but that is one of the biggest arguments you can put forward for the Federal Government taking the thing over.

A DELEGATE: The Federal Government would have the same difficulty in determining to which state to return the money.

CHAIRMAN BELKNAP: There would be a fight between the states, and the gentleman's estate would not be worth so much.

A DELEGATE: It simply moves the fight from one place to another but you would get away from rank injustice to the individual.

MR. ULLMAN (of Youngstown, Ohio): The gentleman from California referred to California as exempting property previously taxed within a five-year period. I think that is well and good, when the tax is on the estate; but isn't it true that most inheritance taxes impose a tax on the successor; and I cannot see why it is good logic to excuse a tax on an estate that has been previously taxed, whether in one or five years, because you are taxing the successor; you are not taxing the estate.

CHAIRMAN BELKNAP: It is not good logic, but it is awfully good human kindness. There isn't any logic in it. If we were going to be absolutely logical on this thing, we would follow the German system—I mean if you are going to work it on a purely progressive basis. The German says, "Why, we are taxing progressive accumulation of wealth." Really, that is the underlying theory of progressive inheritance taxation. "All right," they say, "Harry Schmidt here has one million marks already and his father dies and leaves him another million marks; we are going to tax him at the progressive rate, or the same rate as the person who inherits two million marks who has nothing to start with." Logically that is sound; and it is just as sound that you tax the inheritance, no matter how many times it passes, even two or three times within a year.

In Kentucky a man who had about one million dollars' worth of bluegrass land and who died while it was high, left it all to his wife. They were a closely-knit family; several boys had been working these farms; the wife died within six months, and two taxes had to be paid to the State of Kentucky on that property, which had actually nveer been transferred at all to the wife. Now, the logic is good, but, believe me, the feelings would be mighty bad of the people who paid the two taxes.

MR. ULLMAN: My point is simply this: if the inheritance states are going to administer their inheritance tax laws as written, then they should tax the successors. Perhaps by doing that you will bring about a uniform tax law that will be adopted by the states, patterned after your model tax law, more quickly than if some isolated state undertakes it.

CHAIRMAN BELKNAP: Your point is that the Federal Government taxes the estate and—

MR. ULLMAN: Yes, under the federal tax on the estate you are allowed certain deductions and certain exemptions.

CHAIRMAN BELKNAP: On the other hand, if it passes again, it is entirely a new estate, so that there is really no more logic in one than in the other.

MR. ULLMAN: But you have this written in your estate tax law; you have the provision written in there that property within a certain period shall be exempted.

CHAIRMAN BELKNAP: Oh, yes.

MR. ULLMAN: It does not seem good law to me to write that in an inheritance tax law, where the tax is against the successor, because the property did not pass to him before it passed to some other individual.

MR. GARY: May I say a word there? We have worked out a scheme in Virginia just along that line. We limit it to one year, but where the property passes twice within a year, and it has not been delivered to the first beneficiary, we impose only one tax, but we tax that property just as though it had passed from the original owner to the final beneficiary. In other words, we cut out the intermediate estate. The result of that is this; if a man dies and leaves all of his property to his wife, and she dies and leaves it all to the son, it would make no difference, because they are both in the same class, and the same rates would apply. But if a man died and left property to his wife, and she died and left it, say, to her sister, then we would tax that in the third class. The sister is no relation of the original owner; so we simply cut out the intermediate estate and tax it as though it passed from the original owner to the final beneficiary.

That has just been written into our law, and we have not had any real experience under it, but it occurs to me that that would take care of the very point, inasmuch as the property has never been delivered under the first administration. Of course, theoretically it has, but inasmuch as actually it has never been turned over to the first beneficiary, we simply drop him out and consider it as though it was turned from the original owner to the final beneficiary.

MR. JOHN HARRINGTON (of Wisconsin): There seem to be a number of logical ways of settling this question. We have a system that I think meets some of the objections which have been offered. Where property passes from husband to wife, and the husband died within six years, instead of passing the property out

to the children untaxable to them, we assess the children precisely the same as if there was no provision, just a transfer, but we allow them credit on their tax for the amount of tax which the widow paid when the property passed to her; so it amounts virtually to passing the property to the children without the two taxes, unless the two taxes together should exceed the tax which the widow pays.

CHAIRMAN BELKNAP: That is interesting. I think it is about time to get a little lunch. I have saved some of the best for the last, like every good circus manager does, so the rings this afternoon will be busy.

(Adjourned to 2:30 P. M.)

MONDAY, SEPTEMBER 15TH, 1924.

2:30 P. M.

CHAIRMAN BELKNAP: If you will come to order, I think we will go ahead with the program for the afternoon.

I should like to introduce Mr. Joseph S. Matthews of New Hampshire, who will speak to you on the way the flat-rate plan has worked out.

MR. JOSEPH S. MATTHEWS (of New Hampshire): Mr. Chairman and gentlemen: I have prepared what I have to say and have reduced it to writing. I find some of it has, to some extent, been covered by discussion this morning. For that reason I may omit some of it, but I want to ask your patience while I cover some of the ground which may have been previously discussed, in order to trace through the history of taxation of personal property of non-residents passing at death, leading up to the difficulties with which we are dealing.

EXPERIENCES WITH THE FLAT-RATE PLAN FOR THE TAXATION OF NON-RESIDENT ESTATES

J. S. MATTHEWS
Assistant Attorney General of New Hampshire

In a recent statement the president of this association has called attention to the general dissatisfaction with the present situation as regards inheritance taxes, which he attributes to two main causes, one of which he described as "the confusion, irritation, expense and burden of state taxes imposed by numerous states, often operating upon a single estate, but designed and administered by these various states without due regard for the consequences. The problem is perhaps most acute in the case of non-resident estates."

He also discusses the question of the abolition of the federal estate tax, and goes on to say that "the absolute prerequisite to the abolition of the federal tax is definite action on the part of the states looking to the removal of the harassing and burdensome results of present state inheritance tax legislation, taken without clear regard for interstate comity and neighborliness."

The situation thus described is mainly due to the operation of laws imposing taxes upon the personal property of non-residents passing at death.

The inheritance tax has been many times defined as a tax upon the right to transmit or the right to receive property by will or intestate succession. The right which is taxed is a creature of the statute. It is a legitimate subject of taxation by the state, from whose laws it derives its existence.

Real estate passes at death under and by virtue of the laws of the state in which it is located. The right to inherit real estate is therefore taxed in the state where it is located, and not elsewhere. In fact, no other state is in a position where it could impose a tax upon the right to inherit real estate. In this connection it is worthy of note that there has never been any serious objection to the inheritance tax as applied to real estate.

Personal property, however, passes under the laws of the state in which the decedent had his domicile.

All the states, acting upon principles of comity, have from the earliest times conceded to the state of domicile the right to regulate the disposition of the personal property of deceased persons, wherever such property may be located.

The right to inherit personal property was first taxed in the state of domicile. So long as it was not taxed elsewhere it was considered a legitimate and equitable tax. There is probably no form of taxation under which the burden could be more easily borne or better distributed than under the inheritance tax, if it could be confined in the case of personal property to the state of domicile, as in the case of real estate it is confined to the state of location. But while still conceding to the state of domicile the right to regulate the succession, and while still recognizing the right of the heir or legatee to take the personal property of deceased persons under the laws of the state of domicile, many of the states now require non-residents to pay an additional tax before permitting them to exercise that right, as regards personal property within their jurisdiction.

This is ordinarily accomplished by taxing the transfer at death of all personal property within the jurisdiction, whether belonging to residents or non-residents. The effect of this is to require the executor to pay a tax to every state, outside of the state of domicile, in which any item of personal property is located, before he

is permitted to take possession of the property. All these taxes are additional to the legitimate tax imposed upon the transfer of all the personal property in the state of domicile.

In other words, the time-honored principle of comity, while still observed for all other purposes, is disregarded when it comes to a question of taxation, and the states are taking advantage of the physical presence of personal property within their jurisdiction, to impose a tax which operates as a burden upon rights of inheritance acquired under the laws of other states.

If the question of taxation were the only question involved it might be better for the taxpayer if the principle were altogether disregarded and all personal property were held to pass, like real estate, under the law of the state of location. But there are other considerations upon which this ancient principle is based, and to which it owes its existence, which are too important to admit even the suggestion of such a solution of the present difficulty.

In so far as state inheritance taxes are concerned, it is this feature of the situation which is making all the trouble, and as might be expected, there is widespread and increasing dissatisfaction with it.

There are two general grounds of complaint—

First, the duplication of the tax upon the same inheritance, which is aggravated by the fact that stock in corporations which are incorporated in several states is in some instances taxed in each of these states, as well as in the state of domicile.

Second, the almost endless detail, the exasperating delays, and the large expense incident to the adjustment of the tax, which is in many cases altogether out of proportion to the amount of the tax itself.

It has long been foreseen that a continuance of the taxation of the transfer of personal property of non-residents would eventually destroy the usefulness of an otherwise just and equal tax. The obvious remedy is the abandonment of this practice and a limitation of inheritance taxes to the tax imposed by the state under whose law the property passes. This is the only apparent remedy for the duplication of the tax. It has been advocated by this association since its original conference in 1907, but so far without success.

Attempts to eliminate the duplication of the tax having failed to meet with approval in many states, the flat-rate plan was proposed, as a means of eliminating, as far as possible, the expense and difficulty of administration.

Under the laws of those states where the ordinary inheritance tax rates are applied to personal property of nonresidents, the property within their jurisdiction is treated, for the purpose of the tax, as though it were to be applied proportionately to the payment

of debts, expenses of administration and the claims of the several beneficiaries. In order to make this apportionment it is necessary for the officer who assesses the tax to know the terms of the will, the total amount of the estate wherever located, the total amount of the personal property within the state levying the tax, the total amount of disbursements, and numerous other items of information.

It takes time, sometimes a great deal of time, to procure this information. It costs money, and oftentimes a considerable sum of money, to furnish the information. The expense frequently includes large items for attorneys' fees, in addition to the charges for copies of wills and schedules of assets and liabilities.

Because of the delay it is frequently impossible to dispose of the assets to advantage and many cases are recorded where estates have suffered serious losses, because the executor could not transfer securities in time to take advantage of the market.

The flat-rate plan proceeds upon the theory that the same amount of revenue can be produced with less expense to the taxpayer, if the tax is imposed at a flat rate upon the gross value of the assets within the taxing state, with no deductions on account of disbursements or exemptions, provided the rate is properly adjusted. It aims to reduce the expense and delay to the minimum, and to make the administration so simple that the executor can understand and meet the requirements without assistance.

This plan was first put in operation in New Hampshire and the rate imposed was 2%. We have demonstrated by statistics that this rate applied to the gross value of the property passing, with no deductions, was almost exactly the average rate which residents of the state were paying under the inheritance tax law, after giving credit for all exemptions and deductions. The law has worked out to our entire satisfaction and there have been many instances in which taxpayers have expressed their appreciation of their ability to adjust the tax without expense or delay.

The blank which the executor is asked to fill out is very simple. All that he is required to do is to furnish us with evidence of his authority to act as such executor, to give us the name and residence of the deceased, the date of his death, and a schedule of the personal property within the State of New Hampshire, together with his own name, his post office address, and a few other similar details. Any person with sufficient education to serve as executor or administrator can fill out one of these blanks, without the aid of an attorney. It is not necessary for the assessor to see the will or to know anything about the estate, except as regards the property in New Hampshire. When he receives the schedule of New Hampshire assets, all he has to do is to fix the value, apply the 2% rate, and send the executor a bill. Ordinarily an hour's time

at each end, plus the time necessary to transmit the correspondence, is all that is required.

I had nearly ten years' experience with the administration of a non-resident inheritance tax on the apportionment plan and am perfectly familiar with all the grounds of complaint. In my judgment they are well founded. The administration of that law was exceedingly difficult. We were involved in all sorts of complicated mathematical problems in computing the taxes. The adjustment was always an expensive proposition for the executor, and there were many cases in which it was found, when the assessment was completed, that the tax was not of sufficient amount to pay for the time spent in making the computation.

I remember one case, involving several millions of dollars of personal assets, including a few shares of stock in a New Hampshire corporation in which we were asked to compute the tax on the transfer. It required considerable correspondence to obtain the documents and information which we needed in order to make the computation. When these had been assembled it took an entire day to make the computation and at the end of the day I had worked out a tax of a dollar and fifty cents. I do not know how much the attorneys charged the executor for their services in connection with that case, but if they were at all comparable with the charges ordinarily made for such services in similar cases, they must have been many times the amount of the tax.

There was no avenue of escape from this unprofitable expenditure of time and money, except to say to the executor that if he preferred to pay a tax upon the full value of the New Hampshire property, with no deductions or exemptions and at the highest rate, rather than go to the expense of furnishing the information necessary to enable us to make a correct computation, he might do so.

Under the flat-rate plan, however, the assessment is as simple as a-b-c. It is so simple that a school boy could understand how the amount is arrived at.

I have a stock story which I tell of one case in which we received a telegram from a firm of brokers in New York stating that they represented the executor of an estate, who wished to transfer a certain number of shares of a well-known corporation whose stock was listed on the stock exchange; that they had a favorable opportunity to sell the stock, of which they desired to take advantage, and wished us to advise them by wire what documents they would need to furnish and how long it would probably take to make the adjustment. We wired them in reply, giving them the amount of the tax and advised that upon receipt of their check we would send the waiver by return mail. The check was sent, the waiver issued and the whole transaction closed in less than 48 hours.

In cases where the assets to be transferred consist of tangible personal property it is, of course, necessary to take sufficient time to have an appraisal made, in order to get at the value, but in the great majority of cases the property to be transferred consists of stocks and bonds, many of which are listed on the stock exchange, and in such cases we are ordinarily able to furnish a statement of the tax immediately upon receiving the schedule.

Since the act was passed we have kept complete statistics of all estates under our non-resident taxes, so that we have demonstrated by statistics that this rate, applied to the gross value of the property passing, with no deductions, was almost exactly the average rate which residents of the state were paying under the inheritance tax law, after giving credit to all exemptions and deductions.

Now that, gentlemen, is all there is to it. We simply tax the gross value at a flat rate. We can do it frequently in five minutes, and frequently we can do it with information received in a letter from the attorney, or from the first letter from the attorney. We are getting as much taxes as we did before, no more and no less. I have had, so far, not more than one or two instances in which there was any objection. The taxpayer is surprised and pleased, because he can get his bill and pay his tax and go along about his business.

CHAIRMAN BELKNAP: Gentlemen, I think we are pleased to have Mr. Matthews' paper, and I know that there are people who want to discuss it, and in order to keep the meeting fairly orderly, I would suggest that we go ahead as we did this morning, and have all the discussions after we get through with the papers.

We are going to ask Mr. Lewis of Pennsylvania, who we are very lucky to have with us, to give us his views on what we might do with these inheritance taxes. I take pleasure in introducing Mr. Lewis.

MR. S. S. LEWIS (of Pennsylvania): I want to congratulate you, Mr. Chairman, Mr. Matthews, and the few others who formed the nucleus of which this is the result. When we first got together a few months back, or a few years back, there was a handful of us—I do not think more than seven or eight—and those who participated in those preliminary meetings can certainly feel good at the result of our work.

I am going to talk shop. Every other gentleman who preceded me talked shop. I want to say, though, that I do not profess that the inheritance tax law—the transfer inheritance law of Pennsylvania—is perfect. It has imperfections, the same as any other, but I want to say to you from other states, who have had any difficulties, that if you have any suggestions for corrections, you make

them to Mr. Edmonds, who, in our state, occupies a similar position as our Chairman. He is a member of the legislature; is going to be reelected, and has recently been appointed chairman of the commission to revise the taxes of the State of Pennsylvania; so you will see he has no small job, and as you regard this as a most important subject, I suggest that you make any suggestions to him, or suggest any corrections you may have.

It was early, I think, in April or May, that I received a letter from Professor Belknap asking me to prepare a paper on the best methods of collecting taxes. About that time I was mixed up in the pre-primary fight, and I did not have much time to devote to it. I did not know whether I should be here or not, and I delayed answer. About the time I said I would prepare a paper, he wired me saying: "I wish you would prepare a fifteen-minute paper on the abolition of the federal estate tax," and when I get the program he has, "Possible Solutions of the Problems". In the same mail I received this circular from the National Tax Association, in which a number of problems are raised: First, the abandonment of inheritance taxes as a source of state revenue; second, collection of such taxes by the Federal Government, with distribution by it of part or all of the yield among the states; third, abandonment of these taxes as a source of federal revenue, with a working agreement among the states to accomplish equitable results. So it was for this reason that I did not know what I was to talk about until Mr. Belknap informed me.

Without any further ado, I am going to read the paper which I have prepared and on what I thought I was to speak.

THE INHERITANCE TAX PROBLEM

A SOLUTION FROM THE STATE VIEWPOINT

S. S. LEWIS
Auditor General of Pennsylvania

From our after-the-war point of view, it seems rather curious that a device for raising revenue as entirely feasible and easy of enforcement as the tax upon estates, legacies and inheritances, should not long ago have been completely exploited.

For several hundred years it has been almost axiomatic in our Anglo-Saxon jurisprudence that the right of inheritance is based neither on natural nor constitutional grounds, but exists if at all solely by virtue of statute, yet down until practically the beginning of the present century there were no precedents of human conduct more closely adhered to and more jealously guarded and followed than those controlling the transmission of property and wealth; and as we well know, it is only within the last two decades that any serious invasion of these precedents has been attempted.

Thus, though the inheritance tax is literally as old as Egypt, and we have the authority of Gibbons that the legions of ancient Rome were maintained by funds from this source, it remains for us in the age of automobiles, telephones and aeroplanes to seriously explore for the first time the full social and economic possibilities, consequences and limitations of this relatively simple expedient.

Nor is our work at this time of an academic character, for the most casual inspecion of actually existing conditions will promptly disclose the very real nature and the perilous imminence of the shoals to which we are drifting. Something must be done and done quickly and decisively to save the states against themselves; to prevent the intolerable consequences of multiple inheritance taxes; to straighten out the non-resident decedent's intangible tangle, and to preserve to our captains of industry that incentive for unremitting activity to which we look as a nation for continued progress and prosperity.

The subject assigned me in this discussion, as you will observe, is "A State Viewpoint". The fact that this appears in the program under the more general heading "Possible Solutions of the Problem" and is immediately followed by a general discussion of viewpoints, leads to the conclusion that what I am mainly expected to do is, in terms of the street, to start something; to set up a target at least, if I can do no more.

While I am entirely willing for the sake of the cause to thus freely offer myself as an object of assault, frankness requires the admission that any viewpoint I may attempt to present must be attributed to myeslf, rather than to the State or the people of the state which I have the honor to represent in this conference. I come here solely in the capacity of a state official, holding no brief either for Pennsylvania or her people, and I possess no special knowledge of legislative policies or designs. The truth is, I seriously doubt whether at this time there exists anything approaching a definite policy on inheritance tax legislation in Pennsylvania. We are not by any means certain just what our present statutes mean, and the courts have not yet had an opportunity to define their scope.

Speaking generally of taxation, however, there is one thing that we of Pennsylvania can assert with confidence, and that is that outside of licenses and police measures, our state has never imposed any taxes for other than strictly revenue purposes. Bolshevic tendencies no doubt breed with us as elsewhere; our dislike for unearned wealth is entirely healthy and normal, and we have our fair proportion of rich people given to superior airs and display, yet in Pennsylvania, to my knowledge, there has thus far been no attempt made to confiscate wealth or effect social reforms by the subterfuge of taxation.

Pennsylvania was the first state in the Union to adopt the inheritance tax principle. Our first act was passed in 1826. The act did not impose a tax on direct inheritances, but was confined in its operation to legacies, bequests and inheritances passing to collaterals, that is, to persons other than husband, wife, father, mother, children and lineal descendants.

For almost a century this law has stood practically unchallenged on our statute books and has been familiarly known as the collateral inheritance tax act. Originally, and for a long time, the rate of the tax was 2½% on the clear value of the inheritance or bequest. Subsequently the rate was raised to 5%, and recently, since the adoption of the direct inheritance tax principle, it was further advanced to 10%. Thus we have had long years of experience with this tax and have become quite accustomed to it. As a source of revenue we have found it entirely dependable, increasing normally with the growth and development of the commonwealth. We have further found it a tax capable of collection, without disturbance or resentment, and until the recent increase of the rate to 10%, it was popularly regarded as fair and equitable, and was paid, for the most part, promptly and ungrudgingly. While the figures have little significance for the purposes of our present discussion, we may briefly present the following from our official records.

COLLATERAL INHERITANCE TAXES COLLECTED BY THE COMMONWEALTH OF PENNSYLVANIA

Year	*Amount of Tax*
1842	$ 38,717.44
1860	146,848.96
1880	605,441.29
1900	1,167,665.71
1905	1,677,185.48
1910	1,803,087.73
1915	2,285,427.08
1918	3,003,142.12

It was not until 1917 that Pennsylvania, following the example of the Federal Government and sister states, thrust its hands into the direct inheritance tax hopper. The approach to this previously untapped source of revenue was initially quite modest, and was simply made, by revamping the old collateral inheritance tax measure in a suitable manner to fit the case, the rate being fixed at 2%.

Having, however, ventured into this field and finding nothing to hinder or stay the onslaught, the legislature in 1919 took bolder steps, and passed a general act, covering both direct and collateral inheritances, modeled after the laws of New York and New Jersey, thereby entirely abandoning the old laws and methods and launching into the modern melee.

The new law is called the transfer inheritance tax act and the tax is known as the transfer tax, in contra-distinction to the old inheritance tax.

This act has been in force since 1919 and its difficulties and perplexities are only now becoming apparent. The extent to which it reaches the property of resident decedents, located outside of the state, and the property of non-resident decedents, within the state, is as yet not fully known. We are wrestling with these questions at this very moment, several important cases being now in the hands of the Attorney General in course of preparation for the courts.

But again I would emphasize that whatever the defects or merits of this act may ultimately prove to be, its obvious purpose is solely and exclusively to secure needed revenue to balance our elaborate and ever-expanding budget. This is quite clearly understood on every hand, and neither our state officers, our law-makers, our courts nor the tax subjects themselves entertain any contrary view. The rate as stated is fixed, and is at a minimum amount of 2%.

With this brief recital of our policies and experience with respect to the inheritance tax in Pennsylvania, I wish to turn for a few minutes to the vital issue before this conference. Our purpose, as I take it, is to formulate if possible some definite and workable plan for mitigating the burdens now falling on numerous estates, by reason of the haphazard, overreaching and thoroughly discordant systems of inheritance taxation obtaining in the various states; to suggest some feasible method of securing comity, neighboring understanding, and reasonable cooperation between the states, in the collection of revenue from this source; and to deliberate on the Federal Estates Tax Law and the possibility of securing the desired relief through its discontinuance, as a preliminary step.

To me it appears a self-evident proposition that if the Federal Government persists in the enforcement of the estates tax law, as at present constituted, neither the persuasion of this association nor the power of any other agency can prevail to induce the states to forego their present selfish and conflicting methods, or to submit to such measures of mutual restraint as will alone serve to prevent the disastrous consequences of multiple taxation.

The arguments most commonly advanced on behalf of the states to influence Congress toward withdrawal from the estates tax field are in my judgment for the most part technical and abortive. The most conservative administration cannot be expected to overlook the value of the estates tax as a barrier against the assaults of radicalism, and arguments, to be effective must therefore be vital. To say that historical precedent dictates a return to the federal system which obtained before the War, is to say nothing of conse-

quence to a modern Congressman. Against the argument based on jurisdictional control of the machinery directing the devolution of inheritances, commands little respect, since the Supreme Court of the United States has placed its stamp of approval on the Federal Estates Tax Law, and held it to be within the excise privileges conferred on Congress by the Constitution. No modifications of the laws of inheritance or the intestate laws on the part of the states can ever affect the revenue from the estates tax to any appreciable extent. Furthermore, this talk about statutory rights, natural rights, and constitutional rights, in connection with the principle of inheritance is mainly legal metaphysics and moonshine. It is a patent fact that however the right of inheritance exists, it nevertheless does exist in all the states, and it is inconceivable that any state should either abolish or nullify it.

I would state further that as an argument in favor of the repeal of the federal estates tax, the cry relative to the disturbance of security markets, due to precipitous dumping of large quantities of stocks and bonds on the sales block, to meet payment of the tax, does not strike me with any degree of force. This criticism is as well applicable to death taxes imposed by the states as to those collected by the Federal Government. Besides, I feel very certain that calamitous results of this character can be largely mitigated, if not entirely obviated, by the simple expedient of granting reasonable extensions of time for the payment of the tax.

So also, in examining the reasons advanced for the retention of the federal estates tax, I seem to find many that fall in the sophomoric category.

In spite of the statement of President Coolidge that "the tax is a comparatively small factor in the national revenue," and the suggestion of Secretary Mellon that it be laid aside as a wartime measure which has served its present purpose, it is contended that the Federal Government can only dispense with this revenue by shifting the burden to those who pay tax on income. Whether revenue is actually needed or not needed, and the extent to which it may be needed, is, as every government official who has anything to do with the administration of fiscal affairs well knows, an extremely difficult matter to determine. Already, however the income tax has been modified, and its further modification is persistently urged both by the President and Secretary Mellon, and on the question of the necessities of the Federal Government, I elect rather to place my reliance in these authorities, whose personal destinies are dependent on the success or failure of the policies they advocate, than to accept the statistical summarizations and theories of those less closely connected with administrative affairs. Furthermore, if the estates tax is continued, this argument, based on preference as to source, will have precisely the same cogency, ten, twenty-five or fifty years hence, as it has today.

Again it is suggested that we retain the federal estates tax, because of the valuable statistical information it incidentally affords; because it is a helpful concomitant of the income tax, and because it supplies efficient machinery for reaching tax-exempt securities.

Basically, my thought about both estates and income taxes is, that in our American Democracy they are justifiable only when employed to the direct end of raising necessary revenue, and that they are essentially vicious and in conflict with the spirit and genius of our national policy, to the precise degree that they may be used by indirection for the attainment of other purposes, whether such purposes be the accumulation of statistical data, the circumvention of exemption laws, or the accomplishment of social reforms. If, in the course of our democratic development, or evolution, if you please, these latter objects become desirable, they should be approached straightforwardly and openly and not by subterfuge or misrepresentation.

Finally the estates tax is said to operate as a protection to wealth, by making possible a reduction of income tax, by restraining the states from excessive inheritance tax levies, and by serving as a barrier against iconoclastic assaults from radical quarters. My answer to this proposition is that, in this country, wealth, as such, needs no special protection and should have none. We should, so far as possible, protect and uphold incentive and enterprise, and should foster those conditions which tend to enliven and extend in the individual citizen such motives as express themselves in perseverance, enthusiasm and willingness to work. These motives are vital to our continued national existence and prosperity, and, if undermined, our economic and industrial structure must inevitably collapse. But as for wealth, considered apart from the individual who produces it, we need have no concern, unless wealth should prove a hindrance or menace to our normal activities and relationships, in which case we should deal with it directly, as becomes our democratic ideals.

Should the federal estates tax be repealed? That as I take it is the important issue before this conference. Frankly I do not feel myself competent to pass on the question. If the revenue is no longed needed—and on this point, as previously stated, I am inclined to defer to the judgment of President Coolidge and Secretary Mellon—then obviously the law should be relegated back to its traditional position as a reserve resource, in time of war or other emergency. Would the repeal of the law have the effect of allaying or mitigating the growing confusion and burden of state inheritance tax legislation; would it induce or pave the way for comity between the states; would it tend toward a reduction or an increase of the rates? These questions open a wide field for diversified speculation.

In thinking the matter over, however, I have invariably come to the conclusion that the states themselves, in matters of this kind, which so vitally affect their individual material welfare, are entirely incapable of establishing and enforcing a satisfactory code of interstate comity. The intervention and guiding influence of some powerful, disinterested, and judicially endowed outside agency, is absolutely necessary. So long as the Federal Government continues to rival the states in the collection of death dues, it obviously will be in no position to take up this mediatory office. But should the Federal Government put aside the estates tax, it might, and probably would be in a very favorable position to demand that due restraint be exercised by all jurisdictions imposing inheritance tax, to the end that multiple taxation and the taxation of intangibles of non-resident decedents, which is rapidly developing into a system of iniquitous and paralyzing extortion, be subjected to some degree of fair and equitable regulation.

As I stated a few minutes back, there will be read to you a paper by Mr. McMaster, which will more fully cover the subject of the federal estate tax, and for that reason I do not care to trespass any further upon your time. I thank you.

CHAIRMAN BELKNAP: I think you have found Mr. Lewis' paper very interesting. It brings out a question that is entirely new to me, and I have spent a good deal of time thinking on the subject, namely, that the Federal Government will be in a better position to work on this, if they are not trying to compete with the states.

Mr. Lewis covered his subject very thoroughly. I do not think he needed to apologize, or explain, even as to the topic. We did shift around very considerably, for the reason, as most of you know, that we decided that things had come to the pass where we had to do something, and it was suggested that Mr. Lewis take up the abolition of the federal estate tax. Some were in Europe at the time—Dr. Gerstenberg among them—and I finally got Mr. McMaster to write a paper taking up the cudgel for the federal estate tax.

We are very fortunate in having Professor Gerstenberg to present Mr. McMaster's paper, with which I believe he is not in sympathy—that I ought to leave for him to say, but I was particularly anxious to get somebody to take up that side of the question.

Professor Gerstenberg did not know he was to speak until this morning, but he very good-naturedly agreed to take this job over. I am going to introduce him and say we are lucky to have him with us.

PROFESSOR GERSTENBERG: Mr. Chairman and gentlemen: I should prefer to have the gentleman speak for himself, and I will not

express any opinion on the subject at all. I ought to say to you that Mr. McMaster was for a number of years head of the estates tax division at Washington, and is now an attorney, practicing in New York and specializing in inheritance taxes. I have read a great many things he has written; he always writes with extreme clarity, and I am sure that you will be struck with the force of his paper. The paper is rather long, and I have attempted to make a digest, as I think we can save some time that way.

THE FEDERAL ESTATE TAX

A Brief Defense of the Estate Tax and an Outline of the Reasons Why it should be Retained as a Necessary Part of the Present Fiscal Policy of the United States

JOHN L. MCMASTER
New York City

With the excessively heavy taxes of the war period now receding into the distance, no fiscal question is of more vital importance than the intelligent solution of the present inheritance tax problem and the determination of the part the death duty shall play in the federal and state fiscal systems. It is because of this fact and because of the further fact that from close association and comparative study I have come to regard the federal estate tax as an eminently proper instrumentality of federal taxation, that I am glad of this opportunity to submit in brief outline a statement of the reasons why, in my judgment, the estate tax should be retained as a part of our present national fiscal policy. Before proceeding to this discussion, I should like to state that while the writer earnestly believes that the estate tax should be retained, he further believes, first, that the rates should be kept within reasonable limits, and, secondly, that it should be used primarily for the purpose of raising necessary national revenue and not as an agency of social reform. Notwithstanding the classical authority of such names as Mills and Bentham, and of more recent utterances by one of our great political parties, it must not be forgotten that taxation is an eminently practical question and that the only conclusions which should govern are those based on fiscal necessity and not those motivated by a desire to reach out after panaceas and reform. It is for such reasons that we may properly condemn the recent increase in estate tax rates as confiscatory, unjust and unbalanced, and that we may oppose the concomitant gift tax as obnoxious, unnecessary and unwise. The basic principle of the estate tax is fair and just, and the real issue, as I perceive it, is modification and not repeal.

The objections which are raised against the federal estate tax take a variety of forms but may be summarized under the following headings:

1. The objection based on the historic precedent of the former use of the death duty as a war measure only.
2. The objection that since the states control the devolution of property only the states should tax its transfer.
3. The objection that the estate tax interferes with state revenue and invades a field peculiarly reserved to the states.
4. The objection that the tax is difficult and costly to administer.
5. The objection that the tax is levied on capital.

Taking up these objections in order, it may be replied to the first objection that the death duty has not been continuously employed as a part of our national taxing system in the past, because it has not been required and because, until the late war, we were virtually a tax-free people. If it be urged that it was adopted in 1916 as an emergency measure, when we were not yet at war, what shall we say of 1924, when we have an avalanche of war debts still upon us and have only recently added the bonus to the national obligations? It is submitted that as long as we have a war debt of $21,000,000,000, the emergency, as will be commented on in more detail below, has not yet passed. And parenthetically it may be noted that there is nothing unusual in a war tax developing into a permanent levy. Thus we find that Great Britain, which first imposed the death duty in 1694 as a war measure, did not incorporate it into her permanent fiscal policy until 1842.

Turning to the next objection, that it is the states which control the devolution of property, it may be stated that this objection rests on highly theoretical and legalistic grounds, which may have had some force prior to the decision of the United States Supreme Court in *Knowlton* v. *Moore,* but which are now entirely discounted and discredited. In that case the supreme court held that while the states did control the devolution of property, the taxing power of Congress extends to all the usual subjects of taxation, and that there is no limitation in the Constitution which precludes the levy of a death duty. Not only did the court sustain the constitutionality of the death duty—which is the only practical question involved—but Justice White, in his elaborate opinion, fully answered this particular argument by pointing out the legal fallacy on which it is based. It must not be forgotten that it is the accident of death which gives rise to the tax, and that in the last analysis it falls on property, cloak it as we may in legal terms. Since at such a time, a death duty can be collected with convenience and certainty, and without shocking deep-rooted prejudices, regarding private ownership, both the state and the United States

can step in, and in the plenitude of their power can levy such a tax. As Professor Seligman has said:

> "To regard the tax as a charge on the mere privilege of succession, measured according to the special benefit accruing to the successor, is to revert to the protective or insurance theory of taxation, which has been discarded in modern fiscal science."

But even if none of these facts were so, this objection would be inadmissible, as striking at all forms of federal taxation, for we are an *imperium in imperio*—a nation composed of forty-eight independent sovereignties — and the state and federal governments are co-extensive and co-terminous. If, then, the fact that it is the states which have reserved the right to control the devolution of property, is a valid objection to the estate tax, then the same objection could be urged against the income tax, the sales tax, and in fact almost any tax that might be devised, since it is under the sheltering aegis of the state that we carry on the daily activities of our national life.

Turning to the next objection, that the federal tax interferes with state revenues, we find on examination that there is neither force nor novelty in this assertion. It was urged when the law was first introduced in 1916, at which time twenty states, led by New York, California and Wisconsin, the great pioneers in this field, memorialized Congress on the subject and presented elaborate objections, which took the general form, first, that a successful federal law could not be devised, and secondly, that a federal tax would interfere with and deprive the states of this source of revenue. As to the first objection, the fact that the law has now been in successful operation for eight years and that it has hardly produced a ripple in local probate administration is perhaps the best answer, unless it be the present protest looking to its repeal. As to the second objection, it too is best answered by the facts. Summed up, the conclusion seems unmistakable that while the federal estates tax may have served to restrain the states from excessive inheritance tax, especially on nonresident intangibles, yet in general effect it has accelerated, within certain limits, and has certainly not impeded the collection of state revenues.

In 1909 Dr. West estimated that the total inheritance tax collections amounted to approximately $10,000,000 annually. In 1914-1915 these collections had increased to approximately $24,000,000, and the tax was in existence in forty-two out of forty-eight states, although in many of the states in only a minor degree. In 1920 the state collections amounted to approximately $57,000,000, while in 1922, according to the figures compiled by Professor Belknap, the collections had increased, notwithstanding the federal

tax, to a total of approximately $80,000,000, or more than three times the collections for 1914-1915, and eight times the collections for 1910. The collections for the State of New York, which amounted to $84,000 in 1886, had increased to $8,000,000 by 1915, and to $18,000,000 by 1923. Not only do these figures fail to show any undue interference with state revenue, but it is apparent that there is a large field left wholly untouched by the federal law, inasmuch as it provides for a resident exemption of $50,000, and reaches only 13,000 estates annually, as against a total of 130,000 estates which are reached by the various state inheritance tax acts. And even in the field which is reached, the specific exemption of $50,000 amounts in itself to $650,000,000 annually exempt from federal tax, so that there is an important combined area of taxation exclusively open to the state taxes alone.

And it may equally be asserted that there is no just basis for the statement that the inheritance tax and the property tax form the only means of support for the state. It is true that the revenue from the general property tax constitutes the main source of support for counties, townships and municipalities, but this has no direct relation to this immediate issue. Thus, while in the State of New York, there was collected in 1923 a total property tax amounting to $452,000,000, approximately only $20,000,000 was allocated to the state. Nor do the figures available indicate any impotency in recent control, for out of a total collection of revenue by New York in 1923 of approximately $129,000,000, only $17,786,388 (less than 14%) was derived from the inheritance tax, which is only one-half of the amount collected from the corporation tax, and which is approximately equal to the amount collected from the personal income tax. It may well be asked, then, whether, for the privilege of an exclusive state inheritance tax, New York or any other rich and prosperous commonwealth is willing to barter away the personal income or the corporation income tax. It is not within the purview of this paper to comment on state finances, but if the collection of a moderate federal estate tax unduly interferes with state taxation, then the obvious answer is that it is the state revenues which should be reduced as they have, by this token, reached the danger point.

To the third objection it may be replied that a reference to official reports, or actual personal observation, will show that in no field has the Treasury Department been more successful than in its administration of the federal estate tax, and for all practical purposes the administration may be regarded as on a current basis, notwithstanding that the act must be administered on a national scale and that a field audit is made of every return filed, which requires the annual verification of some $3,000,000,000 in gross value of assets and the examination of many related questions

that arise in connection with estates. And yet, notwithstanding the national scale on which the act must be administered, the basic simplicity of the act permits the Bureau of Internal Revenue to conduct an efficient administration, with a personnel of less than 500 employees, and while I do not have available the exact cost of administration, I should not estimate that it would exceed more than $1 for every $100 collected, and I am certain that compared with the cost of state administration, in any case where the state law is efficiently administered, the comparison would unquestionably result in favor of the federal tax.

It is significant that in the face of the almost universal American use of the inheritance tax, Congress, in a time of emergency, deliberately employed the estate duty, because it was believed to be more capable of effective administration, and it has retained that form of death duty, notwithstanding the fact that the Senate—never friendly to a federal levy—has twice enacted an inheritance tax in its stead. The estate tax has well acquitted itself as an effective form of taxation, and the charge that it is difficult or costly to administer is totally without basis.

To the objection that the tax is a tax on capital, it might be stated that this objection is wholly rhetorical, unless it presupposes that the rates are excessive in themselves. Capital is not sacrosanct in the field of taxation, and our most widespread form of tax—the property tax—is purely a tax on capital, and often unproductive capital at that. Under the necessities of modern fiscal demands, a tax on capital is not open to criticism, so long as it does not amount either to conscription or proscription. As Sir A. W. Soward has said:

> "Taxes leviable respectively on capital and income, although nominally distinct, will as a rule together be found to constitute a complete and separate portion of most modern systems." (*The Taxation of Capital,* 1919.)

In the last analysis, all taxes must necessarily fall on capital or income, yet as regards death duties, it has been pointed out that while it is capital which supplies the standard of taxation, it does not always necessarily supply the source. This observation agrees with our own experience, since it is often the case that the estate tax is paid out of current income, and with the new act permitting a period of from one to five years to complete payment, the danger of direct appropriation becomes even more remote. Nor can it be objected that with the rates heretofore in force the tax in any way threatens to confiscate capital. With a national wealth estimated at $3,000,000,000, it is obvious that while there will be a large turnover in taxable wealth within one or two decades, the appreciable effect of the combined estate and state inheritance taxes of

$220,000,000 annually, will not be sufficient to ever threaten a serious inroad on wealth, which is probably increasing at a much greater annual rate. Nor does a total collection of $220,000,000 annually appear excessive when we find that in 1918 Great Britain collected approximately $156,000,000 from estates aggregating $1,500,000,000, as against our own annual collections of the estate tax from total gross estates aggregating some $3,000,000,000 in value.

Having thus examined in brief outline the objections which are often urged against the federal estate tax, let us turn for a hurried consideration of some of the positive reasons which may be advanced in its favor. These may best be examined as they relate to the Federal Government, to the states, to wealth itself, and lastly, to the general public. Approaching the question in this manner, and taking up the relation of the Federal Government—which has the greatest practical interest in the question—we find that the following may be summarized as important reasons why the Federal Government should not at this time consent to a repeal of the tax:

1. Because it needs the revenue which this tax produces, and because this revenue should preferentially be collected from this immediate source.
2. Because the experience of modern tax administration has shown that a death duty is a necessary corollary and supplement to the income tax.
3. Because without a death duty, the holders of tax-exempt securities wholly escape federal taxation, at the expense of the great body of taxpayers.
4. Because it would be unwise and imprudent to stake out separate fields or spheres of taxation, or to consider any limitations on the national taxing power, other than those imposed by the Constitution itself.

Other reasons might also be adduced in favor of the estate tax, such as the great social value of the statistical data made available by estate tax returns (see Statistics of Income for 1921). But the reasons stated are sufficient to show that the tax has a very vital relation to the entire federal taxing structure, and has both direct and collateral importance.

The basic and compelling reason which may be advanced in favor of the tax is the continuing necessity for national revenue from this immediate source. With an outstanding indebtedness of $21,000,000,000, and with total expenditures for 1925 estimated at $3,298,080,444, apart from the bonus, and with the country still insistent on further relief from the income tax, I cannot agree either that the basic emergency which justified the estate tax has passed, or that the cumulative contributions of the estate tax are

negligible in the scale of the national revenue. From September 8, 1916, to June 30, 1924, it has yielded approximately $771,000,000, which covers seven years of real collections, since the tax is not due until one year after death. The collections in recent years have ranged from $156,000,000 to $102,000,000, and it is estimated that the tax will continue to contribute $100,000,000 annually, which is equivalent to a cumulative contribution of $1,000,000,000 every decade. If the time is ripe to repeal the estate tax, or if this contribution of $100,000,000 is not required in the national coffers, the time is ripe to make a sweeping reduction in income tax. In other words, the estate tax, which falls on the family treasure chest and not on the family budget, should be the last tax to go.

And an annual estate tax collection of $100,000,000 will make an effective reduction in other taxes possible. Thus, basing a comparison on the Mellon Bill, the annual estate tax collections are greater than any of the individual reductions originally proposed by Mr. Mellon under the following headings:

1. 25% reduction on earned income.
2. Reduction in rates of normal tax.
3. Adjustment of surtax rates.
4. Repeal of telephone and telegraph tax and of admissions tax.

Nor is the estate tax negligible, when compared to the personal income tax itself. According to the latest figures available, the total income tax — normal and surtax — for returns filed in 1921, covering personal income, was only $719,387,000, and of this total the tax on net incomes not exceeding $8,000 was only $135,000,000, as against an estate tax collection in 1922 of $139,000,000. Based on the rates then in force, the continuance of the estate tax would make possible the repeal of income taxes on all net incomes of less than $8,000, while, with the recent reduction in income tax rates, it is probable that the annual estate tax collections of $100,000,000 would make possible the repeal of income taxes on all personal incomes of from $10,000 to $12,000. In the face of these facts it would be fiscal folly for the United States to relinquish this tax, and a real injustice to the great body of taxpayers. Stated plainly, the question which presents itself is: Shall the income taxes be further reduced, or shall the estate tax be repealed?

But not only does the estate tax serve as a necessary source of important revenue, but it is in itself a necessary and natural corollary and supplement to the income tax. This view is well recognized by competent students, and has been expressed both in this country and abroad. Thus Professor Seligman has written:

"When therefore we have a system of income tax, the in-

> heritance tax may be regarded as a supplementary tax to reach the real ability of the individual." (*Essays on Taxation.*)

and Soward states:

> "Other federal authorities have not been slow to perceive the mutual help that the income tax and death duty can afford to one another, and a German writer (Schanz, — Jena, 1909) has gone so far as to say that one of the great advantages of the latter duties is that they can be utilized to verify not only the former but all descriptions of direct taxation, and that without such assistance any scheme of income taxation is built on sand." (*The Tax on Capital.*)

It is well known that the collection of income tax presents many administrative problems and that much revenue is evaded, notwithstanding the most earnest efforts of the tax-collecting department. Already it has been observed that the two taxes, taken together for a period of time, serve as great corrctive and leveling agents and insure equitable distribution of taxes to government and individual. Without the death duty, the government is collecting a personal income tax on profit and loss without ever having before it a statement of assets and liabilities. Under these conditions the death duty may well be termed the Domesday Book of income taxation, or, to change the allusion, it can serve effectively as the handmaiden of income tax administration, if it is not driven from the sheltering portico of the Treasury.

A still further reason why the federal tax should be retained is the growing increase in the amount of tax-exempt securities, which certainly find no lodgment with the poor and which, according to the latest available figures, have increased in the United States from $4,000,000,000 in 1912 to over $12,000,000,000 in 1923. Since these issues are tax-exempt for income tax purposes, a large cumulative tax is lost to the Government over a period of years, but since, in legal theory, the estate tax is levied on the transfer of property, these bonds fall within the taxable gross estate when the holders die, and the government eventually collects a certain tax. Thus treasury statistics show that for the calendar year 1922, estate tax returns included aggregate holdings of wholly and partly tax-exempt securities of $220,000,000, which would otherwise have entirely escaped federal tax. To propose then that the estate tax be repealed, which is the only federal tax which can reach this class of property, is directly to propose that the most favored tax class shall receive a still further exemption, at the expense of those whose incomes are produced by the sweat of their brow or the investment of their funds in legitimate industrial enterprises. It is indeed a perversity of federal finance that a government so

concerned over the effect of the tax-exempt issue, should so lightly abandon the only form of taxation which it can at present employ to reach such holdings.

Finally, so far as the Federal Government is concerned, the tax should be retained, because it would be unwise in practice and precedent for the Federal Government to consent to the implied proposition that any form of taxation is peculiarly reserved to the states, or that spheres or areas of taxation can be plotted out and distributed, according to doubtful state and federal commitments. In fact, the writer holds that there can be no safe limitations on the federal taxing power, either from within or without, except those which are clearly delimited in the fundamental charter of the land, the Federal Constitution, and it is peculiarly repugnant to constitutional principles for the Federal Government to propose to barter with the states as to the exercise of its taxing jurisdiction, or to impose on its own sovereignty the restraints of a super-constitutional restriction, having no effect or force under fundamental law. Double taxation is not new in our experience, and if this objection be urged, then it would extend equally to all non-resident inheritance taxation imposed by any state, for what shall it profit an estate to save a federal tax and have forty-eight state taxes remaining; nor is there anything novel in the fact that state and Federal Government duplicate death duties. In Germany the Imperial inheritance tax duty empowers the German States to impose certain additional death duties. In Switzerland, many of the cantons levy a death duty and at the same time empower their municipalities to impose a further tax. In Australia individual death duties are imposed by most of the Australian states, but as early as 1914 the Commonwealth itself imposed a federal duty. It is submitted that the correct view of the problem is that the great fields of income and inheritance taxation, so closely related, are common heritages of state and nation, which should be unjustly exploited by neither but carefully conserved and administered for the common good.

Turning to the states, it may be urged that the federal estate tax indirectly benefits the states in that, first, it prevents an undue increase in the state rates which in turn, since cumulative in character, might entail the breakdown of the whole inheritance tax system, and, secondly, in that it tends to assist state collections, by making evasion more difficult. Since any commitment which state officials might make could be only of temporary or uncertain character, it seems obvious that the repeal of the federal estate tax would be followed by a condition of chaos, so far as the various state inheritance taxes are concerned. On the one hand, we should witness on the part of those states pressed for revenue a mad race in rates and a battle over non-resident intangibles, that

would make the burden of multiple taxation almost intolerable. On the other hand, we should witness a phenomena not now prevalent, because the federal tax cannot be avoided by a shift in residence, namely, a migration of wealth to those states which, in order to attract wealth, would either follow Florida's example and abolish the inheritance tax and income tax, or would sufficiently reduce their rates to induce men of means to claim residence within their boundaries. The result would be that wealth would flow to these lower levels of taxation and the states dependent on this source would find a constantly increasing sterile yield. As the yield sank, the rates would of necessity be further increased, until the burden on the taxable units which could not escape would become confiscatory and intolerable. In short, without wishing to assume the role of an alarmist, I venture to predict that eventually the people would rise up and demand a federal tax and a federal collection, as a relief from multiple state oppression. At the same time the states should not lose sight of the fact that the diligent administration of the federal estate tax act is a great moral force back of all inheritance tax collection, and that properly coordinated, the estate tax organization, together with a common source of inheritance tax information, would serve to protect the state laws at their weakest point, since the jurisdiction of the states stops at their state boundary and much wealth can constantly escape across the line. If the states wish to encourage real evasion of their inheritance taxes, no better method can be devised than to abolish the federal tax.

But even more important, I am in favor of retaining the estate tax, because it serves in three very explicit directions to act as a protection to wealth itself, which is the real basis of all taxing systems. As I perceive the situation, it does this in the following manner:

1. It protects wealth, by making the reduction of income taxes possible, or by making an increase unnecessary.
2. It protects wealth, by restraining the states from excessive inheritance tax levies.
3. It protects wealth, by serving as a barrier against the present strong social drift in favor of the abolition or restriction of large inheritances.

As to the first two offices, the evidence is obvious and has been commented on briefly above. My observation is that even wealth chooses to pay its taxes at the time of greatest convenience, and in an article in *Collier's Weekly* within the past year a man of considerable wealth was quoted as saying that he would prefer to pay a twenty-five per cent income tax and have his estate pay a sixty per cent estate tax, rather than be required to pay a sixty

per cent income tax and have his estate pay only twenty-five per cent tax at his death. As to the third office, it is apparent to even the most casual observer that there is a very strong trend against funded wealth. We do not need to look to Russia, for in conservative England we find the party now in power committed to the principle of the capital levy, while the view is openly expressed in our own country that in the next war wealth as well as men must be conscripted. As very striking proof of this trend, I cite the following facts:

1. The recent increase in the estate tax rates to a maximum of forty per cent and the adoption of the gift tax, at a time when the country was clamoring for tax reduction and in the face of strong opposition from President Coolidge and Secretary Mellon.
2. The declaration of the Progressive Party at Cleveland favoring "a large increase in inheritance tax rates upon large estates to prevent the indefinite accumulation by inheritance of great fortunes in a few hands."

It is apparent that wealth has now obtained a high degree of visibility and that the unit measure of wealth, if not its potential purchasing power, has increased so enormously that the public consciousness is vaguely disturbed by the present rapid accumulations of wealth and seeks some measure to restrain them, forgetful of the fact that wealth is a common trustee for the public good. It is equally obvious that the man in the street still has abiding faith in the Federal Government but doubts the efficacy of state law and knows that it is easy for wealth to escape across the state border. It is such considerations as these which led Carnegie to urge that the death duty be made to supplant all other taxes, and it has not been long since an important book, "The Abolition of Inheritance," attracted considerable attention. Based on personal observation in hundreds of cases, I am convinced that the average man of means does not object to the federal estate tax; that the dissatisfaction which exists is largely professional or due to state considerations, and that one of the first steps to more punitive forms of taxation is the abolition of the estate tax. With the trend so pronounced in this social direction, I submit most solemnly that while both state and federal death duties should be modified and simplified, it would be unwise and unsound to repeal the estate tax at this juncture.

Lastly, I favor the continuance of the estate tax, because I consider it in the interest of the general good. I fail to see how it breaks down any delicate credit structure or how it threatens to impair vested capital or funded wealth. And while the tax serves as a measurable contribution to the national coffers, it is of first

importance that, unlike the great body of other taxes, the incidence of the tax cannot ordinarily be shifted. To that extent and to the extent to which it relieves income taxation, and to the extent to which it preserves a proper balance between capital and income in our federal taxing structure, I believe it to be a direct contribution to the general public good. From such a hurried review, I find myself in thorough agreement with Professor Seligman when he writes:

> "The inheritance tax today scarcely needs defense. It is found in almost every country, and the more democratic the country the more developed is the tax. . . . With all these variations in detail it is clear that the democratic trend is in one general direction, and it is more than probable that progressive inheritance taxes will play by no means an insignificant role in the fiscal systems of the future." (*Essays in Taxation.*)

Surely a tax which traces its origin to Egyptian antiquity, which was not unknown to classic Rome, which was employed by medieval Europe, which is a permanent part of the fiscal policies of all great modern democracies, and which was employed by our own national Government as early as 1797, should not be lightly discarded, as without value in our own national system, especially in the light of the important contributions it has made within the past eight years and the efficiency and dispatch with which it has been administered. May I not urge, therefore, that before the conference commits itself to any attack on the principle of the death duty, such as that contained in the present proposal that one of these two important forms be now abolished, it most thoroughly canvass the whole subject, in the light of the general good and without particular reference to the necessities of either state or national finance. If in its judgment it finds that the federal estate tax should be repealed, it should make certain that such repeal will not be the signal for an unjust increase in state rates, which would still further add to the burden of multiple taxation, which is the real evil of the present inheritance tax situation. To mistake the remedy is not to effect the cure.

Chairman Belknap: That was a very interesting paper. I am not going to undertake personally to answer it. I want to point out one thing, which I cannot sit still, without pointing out, namely, that the author has in certain places seemed to imply that some of us here are opposed to death taxes; that when we are trying to abolish the federal tax, we are opposing death taxation. I do not believe that is tenable ground.

He does bring out one thing that I think we have to take very

seriously, and that is, if we do favor the abolition of the federal estate tax, and we do try to bring it about, we shall have at the same time to take measures to see that we really help the situation by getting the states to put their taxes in better shape.

That paper is a good paper. I could answer personally a good many of the arguments if I wanted to take the time to do so. I know there are some of you here who would like to discuss the paper, and I think the time has about come for throwing the meeting open for discussion, and I should like to hear from any of you here. There are one or two men I should like to hear from in relation to Mr. Matthews' paper. I should like to have a few words from Mr. Gary, of Virginia, as to how the Matthews flat-rate plan has worked out in Virginia, and then a word from Mr. Holcomb, from Connecticut.

Mr. Gary (of Virginia): Mr. Chairman, I had not expected to discuss this question at all this afternoon; but we in Virginia adopted the Matthews flat-rate plan—the New Hampshire plan—almost *verbatim* in Virginia, in 1922, at a special session, and the law went into effect in June of that year. Naturally, as was brought out in one of the papers here today, for the first year collections under it were very small, in view of the fact that it takes about a year under any plan for a law to gain its full weight.

Last year, however, in the second year of operation of the law, we collected approximately one hundred thousand dollars from non-resident estates under the New Hampshire law. This year it would seem that that amount will be approximately two hundred thousand dollars. The law is just beginning to bring in the full amount of revenue. The chief objection, one which is really not an objection, but rather the chief difficulty that we have had in Virginia—

A Delegate: What is your total tax?

Mr. Gary: It is about three hundred thousand dollars on residents, and two hundred thousand dollars on non-residents. We have not been collecting the full resident tax in Virginia. We have this year amended our resident tax law. Prior to that time our inheritance tax on residents was enforced by the local courts; there was no central office in the state that had any jurisdiction over those collections. The results were that in some sections of the state, taxes were being collected, and in others they were not. As a matter of fact, upon a personal investigation — and there are one hundred counties in the State of Virginia—we found twenty-four counties in the state, including some of the richest counties, that had not paid one dollar into the state treasury for a period of five years; and twenty-four other counties had paid in an aggregate less than one thousand dollars over a period of five years; so there

were approximately forty-eight counties out of the one hundred of the state not contributing a penny under the inheritance tax law.

We amended the resident law at the last session of the legislature, so as to give us central administration, and I feel that our resident taxes will double or treble within the next few years, as soon as the law gets operative.

I do not think the comparison is adequate, for the simple reason that I am convinced in my own mind that we have not been properly collecting the resident taxes. But, of course, under the New Hampshire plan, we had central administration from the start and we have been collecting taxes.

As I say, the chief difficulty that we had in Virginia with the New Hampshire plan is the legal difficulty in determining the proper situs of intangible property, just what we have a right to tax and what we have not. As a matter of fact, my personal views, from a legal standpoint, were that the New Hampshire law included everything—and I think in terms it does. Since I have come to this conference I find from Mr. Matthews that by administrative rulings they have left out some things. For example, they tax registered bonds of resident corporations. They do not assume to tax coupon bonds of resident corporations, if they are located outside of the state. On the other hand, they do not attempt to tax registered bonds of a foreign corporation, if they are physically located in the state, but do attempt to tax coupon bonds.

Now, those distinctions are administrative. Then, they have another administrative ruling. If the New Hampshire corporation holds bonds, and the property securing those bonds is in more than one state, they have an apportionment, as between those states. We have never put into effect any of those administrative rulings. As a matter of fact, I did not know, until I attended the conference this time, that New Hampshire had construed their law in that way. It would seem that under the act all bonds are taxable, registered and coupon, if the corporation is a resident, and that all bonds, registered and coupon, are taxable if they are physically located in the state; and I understand that the reason for the administrative ruling is because of the practical difficulties in enforcing the tax.

Now, we in Virginia have not, so far, construed that law, and we have at least one big suit on our hands at the present time, to determine the jurisdiction of the state in connection with bonds. I am particularly interested in this phase of the discussion, because I think it is of importance to find out just how far, from a legal standpoint, we can go in connection with this taxation. Personally I have always been absolutely opposed to taxing non-residents; and when the law was passed in Virginia, it was passed on the basis that while the Virginia legislature did not think it was fair,

because of the duplication in taxation, at the same time, they felt that if the other states were taxing the citizens of Virginia, there was no reason in the world why they should not tax the citizens of other states.

Personally, I believe that if we are going to have taxes on residents, the flat-rate tax is the best method that has yet been devised, and I think it only remains to determine to what extent those flat taxes shall go, and the supreme courts of the various states are deciding those questions for us at the present time.

Mr. Holcomb (of Connecticut): I haven't very much to add to the remarks of Mr. Matthews and Mr. Gary, except to say that in Connecticut I think the contrast between the flat-rate plan and the old plan that we had is even more startling, as probably some of you know, from experience under the law as it existed in Connecticut prior to June 1st, 1923. We required a copy of the inventory of the property wherever situated, a copy of the will, a statement of the debts and expenses of administration everywhere, and a statement as to the proportion in which the property everywhere was situated, to three classes, those classes being lineals, collaterals, and strangers. Then, by a peculiar fiction of the statute, we turned around and treated Connecticut property as if it passed to those three classes in the same proportion as the total estate everywhere situated. Oftentimes it did not in fact pass to the classes in the same proportion as the property everywhere situated. Then we allowed the proportionate exemption, allowed residents that portion, being the proportion that the Connecticut State Board determined. We were constantly in hot water as to how the tax was to be arrived at, and we were sometimes in doubt as to how we arrived at it ourselves.

Now we take the property at death and apply two per cent. Thus determined, it is as plain as anything. We have gotten out a four-page blank, but it is absolutely nothing more or less than a series of schedules, with plenty of space left, in the hope that there will be a lot of property there. I have never seen the schedules wholly filled out; there is always some space left over, but the blank is practically self-explanatory. As a result of that procedure we have been able to give 24-hour service in cases as far as New York. We have had instances where a Hartford attorney would come into the office with the data and a blank check ready to fill in, and he could have his consent to transfer in fifteen minutes.

Under the old plan we had a complicated proposition. I think the best we could do was something like two weeks.

I am very much in favor of the Matthews flat-rate plan, not only from the simplification of the work in the tax office, but also from the point of view of the estate. I have seen it time and time again.

The objection of the estate is not so much to the amount of the tax, but the endless red tape necessitated in getting the consent to transfer. If they cannot get it for quite a period of time, the result is that they cannot sell their stock; they cannot make use of the market, if it is a speculative stock. The market may be up today and down tomorrow. If the stock is up, all right; if not, they have to wait two weeks to get the consent to transfer, and in the meanwhile they have lost their customers, lost considerably more than the amount of the tax.

In addition to that there is the expense of the copies of the various papers, and the expense of the proverbial Philadelphia lawyer to interpret what we were after. The lawyer is worthy of his hire, and after he got through with some of the old procedure, he certainly earned his money.

Now, as Mr. Matthews said, the ordinary school boy could fill out the blanks and get the consent to transfer. It takes away money from our profession, perhaps, but it does help the estate, and I think that is one of the moving considerations.

The tax in Connecticut has been in force only since June 1st, 1923. As you can all appreciate, the non-resident estates will be coming in later than the resident estates would come in. So in endeavoring to get a comparison as to revenue, I took a six-month period, from March 1st, 1924, to September 1st, 1924, taking the flat-rate estates. There were 375 estates, bringing a yield of $58,855.21. Taking the last six-month period, from December 1st, 1922, to June 1st, 1923, which is the end of our fiscal year, also, there were 365 estates under the old law, and the income was $40,370.76, about $18,000 less gross, and somewhat less net.

It does not require any great amount of calculating to take two per cent. I would not be at all in favor of going back to the old plan. I think in so far as the non-resident taxes are concerned, I agree with Mr. Gary. I am not particularly in favor of a non-resident tax, but you have the everlasting fact that you are going to have it. You know and I know that there are many states throughout the Union which will never, I believe, take off the non-resident tax.

Now, if you have to have a non-resident tax, why not be as fair about estates as is possible? Why force them to pay more oftentimes than the amount of the tax, in order to determine what that tax is?

The Matthews flat-rate plan will do it. If it is a question of how much revenue you want to produce from the non-resident source, what is your rate? What rate is necessary to produce that? Any statistician can go over the records of the past year and find out what is the average non-resident estate coming in, and it is a simple proposition to ascertain the rate necessary, on the flat-rate plan, to produce that same revenue.

DELEGATE FROM TENNESSEE: So, for instance, a resident of Pennsylvania owns stock in a corporation of your state of Connecticut, and the state of Pennsylvania levies an inheritance tax on that same stock: do you levy the two per cent anyhow?

MR. HOLCOMB: Yes.

DELEGATE FROM TENNESSEE: I find we are losing money in our State of Tennessee. We do not do it.

CHAIRMAN BELKNAP: That is what the other states found out.

DELEGATE FROM TENNESSEE: I find that the other states are working pretty heavy on that. Our law is a departmental ruling, and that is the answer to all inquiries from attorneys and from all the states in the Union, that if the state where the decedent died levies a tax on the stock of a corporation domesticated in our state, we do not levy a tax on non-residents. I find that we need to change our law.

MR. HOLCOMB: I did not get the sum and substance of your remarks.

DELEGATE FROM TENNESSEE: The sum and substance was, whether or not your state would levy the tax on the non-resident, while at the same time the state of which he is a citizen also levies a tax on that stock of the corporation in your state. I think everybody else does but our state.

MR. HOLCOMB: You have the same objection to the flat-rate plan you would have to the old.

DELEGATE FROM TENNESSEE: I am going back to get that changed if I can.

DELEGATE FROM RHODE ISLAND: Rhode Island does not do it.

MR. JOHN HARRINGTON (of Wisconsin): I want to inquire if you apply the flat-rate tax to the non-resident decedent leaving real estate in your state.

MR. HOLCOMB: No, we do not. Real estate passing by the laws of inheritance of Connecticut, we treat as if the owner was a resident decedent. He has the full resident exemption allowed the various classes, and is allowed to deduct from the gross value of the real estate, mortgages not deducted in the inventory. The Connecticut tax is assessed as of a date prior to the decedent's death, and he comes in at the low rate, at the same rate as residents, on the class to which in fact that real estate passes.

MR. JOHN HARRINGTON (of Wisconsin): Now, what is the logic of assessing real estate on a different basis from personal property,

and assessing the stock that represents real estate, in the case of real estate corporations, if left by a non-resident?

Mr. Holcomb: As I was telling Mr. Gary last night, when he raised the same point, the only logic is that we chose to make the dividing line between property passing by inheritance and property not passing by inheritance, rather than between residents and non-residents.

Chairman Belknap: I think the time has come to throw the meeting open for discussion. We are going to have to limit the talks to five minutes, unless the assembly votes that the man who is talking is so interesting that he cannot do without five minutes more. I shall be glad to hear from any of you on any subject. I hope we can get some real live discussion on whether we want the federal estate tax abolished, and what the plan is liable to be on that.

Mr. Meyer: On the basis of the Matthews plan, speaking from the standpoint of a trust company that acts as executor, administrator, and so forth, we would further the suggestion of a flat-rate plan. We never objected so much to payment of the tax, as to the difficulty of finding out what it was and to the time consumed in ascertaining the amount and getting it paid. We would favor it on two grounds: first, that it is easily and quickly ascertained; and second, of course it saves a great deal in the way of attorney's fees, in obtaining the necessary papers, costs of certified copies and other incidental expenses. We would favor it on those two grounds.

Chairman Belknap: Can you give us any idea of what the costs of those papers normally are? You cannot give it accurately, but what does a certified copy of a will cost—two or three dollars?

Mr. Meyer: On an average, three and one-half dollars; from there up.

Chairman Belknap: There you have three dollars and fifty cents for that; and you have to have a certified copy of the power of appointment. What is that called?

Mr. Meyer: That would be another fifty cents.

Chairman Belknap: That is four dollars. Then what is the inventory?

Mr. Meyer: If we make extra copies, it just costs us the cost of overhead.

Chairman Belknap: Maybe another fifty cents?

MR. MEYER: The largest expense is the counsel fee. We have been unable to do it by correspondence.

CHAIRMAN BELKNAP: It looks as though it would cost about ten dollars to one of the big trust companies. They have kept track of it.

MR. GARY: Isn't it true that if a man died in New York with a hundred million dollar estate, and left ten thousand dollars' worth of stock in New Jersey, he would have to file an inventory of the 100 million dollars estate in New Jersey to get that ten thousand dollars' worth of stock transferred?

MR. MEYER: True; and pay at the highest rate.

CHAIRMAN BELKNAP: Pay at the minimum rate.

MR. MEYER: No; ten thousand dollars would be thrown in the highest rate.

MR. JOHN E. MCCREHEN (of Columbus, Ohio): I have some information which I think would be of interest to you. I represent the organization which I think was responsible for the initial organization of the National Tax Association. I represent the Ohio Chamber of Commerce.

Not knowing that the National Tax Association would take cognizance of this serious situation, I addressed a letter about five or six months ago to all of the state chambers of commerce and corresponding organizations in the various states, suggesting that they consider the adoption of reciprocal clauses in their state laws—a uniform reciprocal exemption clause. Ohio has such a clause, or at least a partial clause. We exempt the property of non-residents up to the amount they pay in the other state. That is, if the rate in another state is not lower than that in Ohio, we collect no tax from the property of a non-resident, but if the rate in the state is lower than that in Ohio, we collect the difference between the two rates.

There are about twenty-five or twenty-six such organizations in the country at this time, and I received very favorable replies from nearly all of them. Nearly all said they would be willing to make the effort, provided the other states agreed to do likewise.

We are to have a conference in Pittsburgh on October 9th, of officers of state chambers of commerce, and this is one of the subjects which will be discussed, and I want to take the liberty of suggesting that whatever plan is worked out here be transmitted to that conference. I am sure the officers of the state chambers of commerce would welcome the attendance of an emissary from the National Tax Association, to present the findings of this conference.

Whatever is to be done, if it is to be done by states, the state chambers of commerce would be the logical medium through which to work. Of course, that would leave nearly half of the states to be handled in some other way; that is, if the National Tax Association assumes the responsibility of directing the effort to make these changes, they would have to find mediums in the states which do not have a state chamber of commerce, or other organization. The state chamber of commerce would be the logical organization to keep watch of whatever plan is carried through. Mr. Belknap suggested this morning the difficulty is that the states are continually changing. The principal function of state chambers of commerce being legislation, they would be the logical organization through which to maintain whatever changes are established. I am sure that they will be glad to receive a resolution, or a representative committee, from the National Tax Association, which will present the findings of this conference, and if we can be of any service in carrying that message, we shall be very glad to do so.

CHAIRMAN BELKNAP: We are very glad to hear from you.

MR. DAVIDSON (of Buffalo, N. Y.): This morning you spoke in the opening remarks about people thinking that these cases where 100 per cent was charged were exaggerated; that many stories told about wealthy estates were exceptions. I ran across a case not long ago which I think is very usual, and which for all practical purposes was 100 per cent. This case was where a woman was worth about 125 thousand dollars, and she made a will and left that to her three children. The children have not received a cent from that, because the State of New York took it all for taxes. It so happened that her father, who died just six months before she died, left about ten million dollars, and they took about three million dollars for taxes, and the balance was left under the terms of his will, which provided that this property was to be divided evenly among his children, subject, however, to the life use of his wife. So this daughter, of course, had not received one cent from that property, and that was five years ago, and her mother is still living. So even if the daughter had lived, she still would not have received a cent from it; but she had 125 thousand dollars herself, which I imagine she took a good deal of pleasure in leaving to these children in her will.

The State of New York, however, having collected about a million from her father, came in and said, "Now, you have a vested title in this property, that your mother is getting all the benefit from, and we are going to charge you about 100 or 125 thousand of state inheritance tax, simply because you have that vested title, which never did you any good."

She has a brother and a sister still living, and now, after five

years have passed, if she should die today, the tax would be about 250 thousand dollars more than the property that they can leave to their children, because the federal tax would come in now. I do not think that is such an unusual situation.

A woman about fifty-five years old came into our office the other day and said that her brother had died about six months before. Her brother was a bachelor, running a drug store, and had a little surplus money, and he wanted to be absolutely safe, so he would invest only in stocks listed on the New York stock exchange. He died, and she was trying to settle the estate. He left about fifty thousand dollars; five thousand dollars to an invalid, and the balance was to be divided between herself and a much older brother; so when she started to try to get this, she said she wanted to sell these stocks so she could pay the five thousand dollar gift and the debts. She said she was getting nowhere, and called to know if we had anyone to tell her what to do. I gave her a list of the requirements from the Prentice-Hall Company, which stated she must get eighteen waivers from the State of New York, and she must deal with fifteen states. She said, "I wrote to this state, and they told me I could not transfer this stock, until I had paid the debts of the whole estate and settled it up, and sent on certificates to that effect. I wrote back and told them I wanted to sell the stock, so I could pay the debts and settle up." She said, "One state wrote to me, after you pay the taxes in these other states, we can figure out how much this tax is"; but she said, "When I wrote to the others, they told me I first had to pay the taxes in this state over here before they could tell me what it was."

That was just an ordinary estate totalling altogether fifty thousand dollars, on which she hoped to get twenty thousand dollars, but to do that she had to deal with fifteen different states and get eighteen waivers from the State of New York.

The New York stock exchange requires every stock listed on the stock exchange to have a transfer agency in New York City, so that no matter where you are, if you are going to confine yourself to a stock listed on the exchange, there is a transfer agency in New York City, and I think that before that stock can be transferred, you have to get a waiver from New York, whether there are ever going to be any taxes or not. I don't know just why that requirement is, but I think it is as I say.

Now, it seems to me that there are some things that we cannot hope to do, and here are two or three of them. We cannot hope to get any reduction in rates in state or federal taxes. I will pretty nearly bet on that. We cannot hope to get the Federal Government to give up the federal estate tax, and I certainly bet on that. Certainly we cannot get the states to give up taxes on non-residents, unless we are going to give them something that will bring in just as much, and I would certainly bet on that.

Here are some things it seems to me we can do: we can eliminate some of this expense and trouble that I have mentioned of this woman in trying to collect this little estate, such as has been brought out, in the flat-rate plan. We can use our efforts to simplify the requirements, to reduce the expenses, and to avoid the delays. That is something that this conference probably can accomplish.

I do not think that we can get any reductions either in federal or state taxes, or in the rate, and the best thing we can do is to urge people to buy Liberty bonds and leave cash, as Mr. Atwood advised, so the taxes can be paid, without confiscating the estate.

Mr. John Harrington (of Wisconsin): One of the important things to be considered, it seems to me, is to what extent the administrative officers of the states, or the laws of the states, can eliminate many of the expenses connected with administering taxes on non-resident estates. What is the necessity of a copy of the will, or a copy of the inventory, in a case where there is no tax due? If the person making application for a transfer certificate will state what the property is, its amount, and to whom it goes, nearly every administrative officer can tell at once whether there is going to be a tax. If there will be no tax due, then there is no necessity for a copy of the will, or of the inventory, in any such estate. I do not know what administrative officers do with a copy of the inventory in a foreign estate. I don't think that in twelve or thirteen years' experience, I have had occasion to need it in more than two or three cases. What is the inventory for? Now, these expenses and similar expenses can be saved, very largely.

I make this further proposition; that a state dealing with a non-resident decedent should use every courtesy possible and should do just as little as possible to create either expense or delay. It seems to me that in eighty per cent—perhaps ninety per cent—of non-resident estates, the whole matter ought to be closed up within three or four days from the time that a petition is received; and the delay in receiving the petition depends upon the representatives of the estate and not upon the officials of the state where the tax is to be collected.

As a further proposition, I think that no state should make any charge for any service or any expense, but should merely have the proper proceedings, obtain the tax that is due, and out of that tax stand its own expenses for service of any kind, so that the estate of a non-resident decedent will bear no expense and have no payments to make, excepting the amount of the tax to the state where it may be due. Promptness of procedure, and avoidance of expense will do away with much of the irritation connected with the inheritance tax against non-resident estates.

CHAIRMAN BELKNAP: I should like to hear a few words from the State of New York. Mr. Graves, I believe, represents the Governor, and we should like to have his views on the question of whether New York State is prepared to have the Federal Government come in, as it is going to do now, and take forty per cent, before New York gets any whack at it at all.

There is one thing you lost sight of here today. There has been a lot of talk about what has happened. Now, a lot of people seem to forget that Congress met this last year and raised the rates on estates—pretty nearly doubled them—not quite—and that is going to have a tremendous effect on the collection of taxes by the states.

Now, it is perfectly true, as Mr. McMaster has pointed out in his paper, that the Federal Government taxes estates of over fifty thousand dollars only, but if you will take the California report—I think Mr. Smith will bear me out—the biggest part of the tax is paid by the big estates. Isn't that right?

MR. SMITH: Quite.

CHAIRMAN BELKNAP: So that it is all very sweet to talk about the few estates that the Federal Government taxes and leaves all the rest for the states; but I should rather be free to tax two different estates I know of, that are going to have to pay tax some time, than I would five thousand or maybe ten thousand other estates that come in due course. It is the big estates that pay. Where you take forty per cent out of a big estate, it is going to hurt. This talk about going along happily just as we are, and why worry, I don't take any stock in, and I should like to hear from Mr. Graves.

MR. MARK GRAVES (of New York): Mr. Chairman and gentlemen of the Conference: I have been somewhat in the position of the fellow who was following Major Mugg around the golf course. I have been listening. Major Mugg was a man with a rather violent temper. When he was playing golf and the game was going against him, he often used very strong language. On one particular afternoon a chap was following him around the course, and finally the major turned around and said, "What in thunder are you looking at?" He says, "I am not looking; I am just listening."

This inheritance tax situation is one which is difficult to diagnose. It is about as difficult as the young mother found in diagnosing what was the matter with her little girl—the first child. The little girl was crying, and her father said, "What is the matter with that child, anyway?" The mother said, "I really don't know, either, whether she has eaten too many strawberries or because she wants more."

We of New York took the letter of President Bailey quite seri-

ously. There were three propositions or suggestions contained in President Bailey's letter, and if I may, Mr. Chairman, I am going to comment briefly on each of the three. I will take them up categorically.

The first was this: Shall the states abandon the inheritance tax as a source of revenue?

New York State—at least the New York State tax commission and the Governor of the state—would oppose that plan. We should oppose it, because when this country was founded, one of the powers reserved to the states was that of passing laws with respect to the devolution or succession of property. It has been recognized from the very beginning that the states had a right to tax inheritances—a strong moral right to do so. The inheritance tax has become an important part of our tax system, the same as it has in many others. Our revenue and expenditure programs are based upon the fact that since 1885 we have had this source of revenue as one of our reliances, and naturally under the situation and conditions existing, it would upset our revenue system to have that subtracted from it. So we of New York would oppose that.

The second proposition is, that the collection of all inheritance taxes be vested in the Federal Government, and that a portion of the taxes so collected be distributed to the several states.

We do not look with favor on that plan. We view it as impracticable, in that it would be impossible of accomplishment. Before that could be done the Federal Constitution would have to be amended. I think it would take an unlimited amount of time and an unlimited amount of argument to ever convince the legislatures of three-fourths of our states that that power should be given to the Federal Government; but, aside from that, there is every practical objection to it. Different states have different requirements, different revenue requirements, some because of their situation, or the functions of government which they have undertaken, or the density of population, or for various other reasons. Greater demand is made on one state than on some other state for revenue.

In the State of New York we have a barge canal, which we have to finance. We spent about forty millions in the case of public education; we spent the sum of five millions or more to encourage agriculture, and we take care of all the insane of our state; we maintain eighteen charitable institutions. The demands upon our state government are fairly great. Some other state may not have such demands to meet. They may be in the position of Florida or Alabama, and not find it necessary to levy any inheritance tax, or to levy a lower inheritance tax.

The point I am trying to make is, that inasmuch as this forms a part of the revenue system of each state, with their demands or need for revenue not at all uniform, this method of federal collec-

tion and distribution would not work out; it would mean that one state would have more revenue than it needed from this source, and some other would have less, and would not be able to keep its revenue system in balance.

The third proposition is that the states urge the Federal Government to repeal the federal estate tax.

Some of the previous speakers have expressed the view that this is impossible of accomplishment. I refer to the Auditor General of Pennsylvania. I have no doubt that his political wisdom is superior to mine, but my observation has always been that the representatives from a county, or a city, or a state are always more interested in the people back home and in the affairs of the city or the county or their assembly or their senatorial district, than they are of the state or the nation, the people for whom they legislate. So, as a practical proposition, I think that it is by no means impossible to so stimulate interest in the states that favorable action might be secured from the Federal Government.

We of New York believe that certain sources of taxation should be exclusively federal. We believe that others should be exclusively relied upon by the states. We think that there are some which are proper for both to rely upon. We must keep in mind that when this country was formed and the states agreed to enter into a family relationship, the states gave up a lot of sources of revenue to the Federal Government, in consideration for the things that were given to the states, or reserved in the states. We believe that because traditionally, ever since this country has existed, inheritance taxation has been reserved, to be used by the Federal Government only as war measures, and that the Federal Government should abandon this tax.

Professor Gerstenberg, in the paper which he read, said that the war is still on, that we have not paid for twenty-one million dollars' worth of bonds. I am not saying that we must repeal it today or tomorrow, but at an appropriate time, we think that the Federal Government should repeal this estate tax. Moreover, we believe that, because it does interfere with our own revenue plans. You cannot take out of the various forty-eight states 220 millions under the new law, which becomes two billion two hundred million in ten years—you cannot continue to do that, year after year, without influencing the taxing base upon which the various states will levy for their inheritance tax. The states are going to get less for that very reason.

PROFESSOR GERSTENBERG: You made a mistake there. It is 139 million, not 220 million, that goes to the Federal Government, and the rest goes to the states, so the Federal Government is getting the lion's share of it.

MR. GRAVES: Didn't you give an estimate of 220 million?

PROFESSOR GERSTENBERG: Yes; the total amount of inheritance taxes collected by the states and the Federal Government; of that, 139 million goes to the Federal Government, so the Federal Government is getting the lion's share.

MR. GRAVES: Under the new law they will get more.

PROFESSOR GERSTENBERG: Take more, yes.

MR. GRAVES: Whatever the amount is, it depletes capital by that amount, and will influence the taxes which the states will later collect, at whatever rate they impose. But that is not the only objection from a revenue standpoint; the fact that the Federal Government is stepping in to take forty per cent, will naturally retard or prevent the states, even though their plans demand and require it, from increasing a rate if it is found necessary.

Now, a very important phase which has developed here is this question of multiplicity of taxation. I need not go into that. We of New York are thoroughly in accord with any plan which can be worked out, and we favor working one out so that there will not be this multiplicity of taxation.

In 1911, following the recommendation of the National Tax Association, we passed a law exempting the non-resident from taxation on his intangibles. We kept that on our statute book until 1919, and none of the other states followed suit. The result was that we re-enacted our previous statute.

What I think we have got to do, to get away from this multiplicity of taxation, is to take the model tax law, with such changes as may be found necessary to be made in it, and include in it a reciprocal provision. I will put it this way: put in the Matthews flat-rate plan, or reciprocal provisions, or probably the Matthews flat-rate plan with reciprocal provisions. Perhaps that would be a good solution.

That, Mr. Chairman, is briefly what New York stands for, as to the tax commission, and the Governor of the state is in favor of that program.

MR. LEWIS: I should like to inquire the amount of tax collected from your inheritance tax.

MR. GRAVES: It varies. I think the last fiscal year, about nineteen million.

MR. STEPHENS: Twenty-two gross, twenty-one net.

MR. GRAVES: In proportion to our budget, it is the third main reliance.

A DELEGATE: Do you know what percentage it is of your total state revenue?

MR. GRAVES: Fifteen to twenty per cent.

A DELEGATE: May I ask another question: Do you know out of that, how much of your inheritance tax is collected on intangibles?

MR. GRAVES: We have never prepared statistics until this year. We shall be glad to give you that information. I haven't the figures in mind.

CHAIRMAN BELKNAP: We appreciate that talk, and I should like to hear now from Mr. McCloy, as to what he has on his mind this morning.

MR. MCCLOY: I arise to oppose the New Hampshire plan. I do that reluctantly, first of all, in view of the general favor it seems to have received from corporate fiduciaries, who have had their labors lessened and their hours of golf enlarged; and I also note that favor of the plan is very strong on the part of the tax-gatherers, who find it easy.

Now, with all due deference to the learned Attorney General, who is prominently identified with that plan and for all of whom we have the very highest regard and respect, I want to make this fundamental objection to the New Hampshire plan.

First of all, it is not a death tax at all; and, secondly, it is a tax that is imposed, not at the two per cent flat rate, as they say, but in reality it imposes a tax at the highest rate of any statute in the United States. That is to say, under the New Hampshire plan, looking at the other side of the ledger, now that we see how simple it is to have it fixed under the New Hampshire plan, if a resident of New York State should die, leaving, say, 100 thousand dollars in value of stock in a New Hampshire corporation and leaving it entirely, we will say, to a niece, then when that entire estate came to be transferred in New Hampshire, the tax to be paid would be exactly two thousand dollars.

Now, if I represent the niece, who, under the will of this testator, resides in New York, and who is entitled to the net estate, if that two thousand dollars has been taken by the State of New Hampshire, I am going to pursue that to the United States Supreme Court. In other words, I believe the New Hampshire plan is a delusion and a snare, and if I may say so without presumption, in the absence of any decision of the courts, it is unconstitutional. I think that it is absolutely invalid and, like most other fancies and shortcuts, it will never stand the test of judicial scrutiny; and therefore, I think we make a mistake in falling for this *ignis fatuus*, instead of addressing ourselves to a plan requiring hard work. I never saw a plan that was successful that was easy.

PROFESSOR GERSTENBERG: Why does he consider it to be unconstitutional, on what ground?

Mr. McCloy: It is not a transfer tax, a death tax; it is a property tax, under the guise of a transfer tax. You cannot make it a transfer tax or death tax by merely calling it so. In other words, the thing that is transferred is the thing that is taxed.

Mr. Smith (of California): The Supreme Court of the United States has held that you can place any burden you like upon an estate.

Mr. McCloy: I will meet that suggestion. Suppose in the case that I assumed, the State of New Hampshire collects its two thousand dollars, and that there is one hundred thousand dollars debts; suppose that tax is collected on registered bonds of a New Hampshire corporation; do you think this New Hampshire plan solves this whole problem? You are simply pushing it a little further, which makes it more difficult to solve. In that case, if the bonds happen to be physically located in another state, and we have the New Hampshire plan imposing the tax at the rate of two per cent, what then? New Hampshire imposes a tax of two thousand dollars, because the bonds are registered there. In the other states, shall we say Pennsylvania or New York, they impose a tax of two per cent, because the bonds are located there. What then? How will you pay four thousand dollars of tax with ninety-eight thousand dollars of debts? That is possible, isn't it? It is not only possible, it is probable.

The point I make is that when you come to apply the New Hampshire tax, you are imposing a tax at the rate of two per cent, you are imposing a tax at the rate of thirty per cent, sixty per cent, one hundred per cent, varying as the net estate may be. You cannot get away from the net estate, when you impose an inheritance tax, and there is no use of attempting to do it.

Mr. Gary (of Virginia): I am rather sorry you called upon me to explain the Virginia law or Virginia experience under the Matthews plan, because I wanted to address myself briefly to another phase of this discussion, and at the same time I do not want the conference to think I am trying to monopolize this time.

There is one phase of the subject that I think we ought to discuss very fully today, which has been very briefly touched upon, and that is the question of the federal estate tax. Personally, I have always been opposed to the federal estate tax, largely because I believe that that tax is wrong in principle.

Now, I might say in starting, that the Supreme Court of the United States apparently does not agree with my view, and I hesitate, naturally, to express any view contrary to the Supreme Court of the United States; but I think if you will read the decision of that court in the case of Knowlton versus Moore, if you can get anything out of it, it is more than I can. I have never been able

to justify in my own mind how the federal estate tax is constitutional. If it is a property tax, then it is universally conceded that it is unconstitutional. On the other hand, if it is a privilege tax, such as it is recognized to be, in practically all of the states today, then it is unquestionably on a privilege which is granted and controlled entirely by the state government; and why the United States should come in and tax a state privilege, a privilege granted and controlled by the state, is quite beyond my understanding.

Now, of course, by some subtle reasoning, you might escape what seems to be the consequence of the constitutional requirement, but it seems to me any reasoning which would escape that direct proposition must be subtle. I do not think it is an answer. I think the argument which was advanced in the very able paper read by Professor Gerstenberg is rather in support of that theory, for the simple fact that he drew some comparisons there with the income tax. He says that it might be argued in the case of income taxes, just as in the case of inheritance taxes, that inasmuch as the several states more or less control the making of profits, the Federal Government would not have the right to tax the income, but that leaves out of consideration the fact that the Supreme Court has, on several occasions, held that the Federal Government did not have the right to tax income, and it required a constitutional amendment before the income could be taxed.

Now, I feel that for that reason the federal estate tax is wrong in principle, and I hate, when a thing is wrong, to feel that it is a matter of impossibility to correct it; and I at least feel that even though it might be impossible, certainly this association, which stands largely on grounds of principle, should not hesitate to make a fight. To my mind the statement made by the gentleman representing the Chamber of Commerce of Ohio, here today, is a very favorable sign of the general atmosphere that is being created throughout the United States on this situation; and if we can get the state chambers of commerce behind us on this proposition, and after them the local chambers of commerce throughout the United States, I think the Federal Government will fall in line, and I believe that if we get the proper sentiment behind it in the states themselves, nothing is impossible. And it seems to me that that is the first step in any matter of reform, because since the Federal Government is taking as high as forty per cent of the estates of decedents, the states are certainly going to be limited in this form of taxation.

I do agree with the gentleman that if we are going to urge Congress to repeal this law, we must show some disposition ourselves to correct the evils which now exist throughout the land, because of the multiplicity of taxes that are imposed. I believe I stated just a few minutes ago, in explaining the Virginia law, that

I am personally diametrically opposed to practically all forms of non-resident taxation; and from the trend of recent decisions it would seem that we are going to be very severely restricted by judicial interpretations in that field; and I personally should like very much to see the courts restrict that field very materially, if we cannot get restrictions elsewhere.

I might say that—I might appear slightly inconsistent, and yet I was not—I personally recommended the New Hampshire flat-rate plan. I was like my friend from Tennessee; I came up to attend the conference, and I found out that some of the other states were taxing some of our citizens, and I said, "Virginia is losing something in comparison with other states"; and I went back to Virginia and recommended the New Hampshire flat-tax plan, because I considered it at that time the best plan that has yet been devised for taxing non-resident estates.

I appeared before the Committee of the House; we had some open discussions, in which I participated, and I am very frank to state that in every one of those meetings I addressed myself to a discussion of that plan. I said, "Gentlemen, here is a law which I have prepared, which I consider absolutely unfair and theoretically wrong; I do not agree with it at all; I think it is an iniquitous law, and yet the other states are taxing the citizens of Virginia, and it seems to me that we are driven to a law of this kind in self-defense. If they are going to take money from our citizens under similar laws, then there is no reason why Virginia should not reciprocate." And I said, "In my opinion, this is the very best law that has been devised to reach the situation."

The Virginia legislature passed the law just on that basis, and I feel quite certain that the Virginia legislature would be just as willing to repeal it on the same basis, if you could go before them and say, "Now, the other states have released these taxes, and therefore it is no more than fair and just that we do the same thing."

But I do believe there are matters that we should address ourselves to particularly this afternoon, and that is, first, the abolition of the federal estates tax, and, secondly, a mutual understanding between the states whereby we may eliminate some of the double taxation. I do not believe that this conference can work a plan out here today, but I believe that if we could get some competent committee to study this situation, properly representative of the various states, they might be able to work out some plan of that kind, and I hope that at least that much will come out of this conference; some recommendation of that kind.

Mr. Joseph S. Matthews (of New Hampshire): I think perhaps I ought to say a word in answer to this gentleman, Mr. Mc-

Cloy. Of course, he refers to a situation which may arise, where propery is to be transferred belonging to a non-resident, and where there are debts, which, in case we were operating under the usual plan, would be deducted; and he states a situation which might arise where the estate was insolvent.

In the administration of the law situations of that sort came to our attention. Before we had been operating a great while we had a small estate, perhaps five, six, or seven hundred dollars, where a party was indebted three or four hundred dollars, and the expenses of administration would wipe out the estate. I naturally wanted to find some way to help the taxpayer, if I could, but in a situation of that sort I could not see how, under the plan, we could do it, without defeating the purpose of the act, because if we were to do it in that case, we should have to do it in all cases. So, I was obliged to tell him that we should have to rule that they would have to pay the tax on the value of the New Hampshire property; but, it was a small estate, and I can absolve my conscience, by assuming that even at that, the tax he paid was less than the expenses, if he had been obliged to furnish the information necessary to show that there was no tax.

Then later on the question came up in a larger estate, where stock in a New Hampshire corporation was transferred, and the proposition put up to me was that we should not tax it at its full value, because the particular stock was pledged, subject to a mortgage. On that proposition I thought I did see a way that I could protect the taxpayer, without interfering with the general plan of the act.

The debt for which the particular property was pledged did not require him to go into the details of the estate. All he had to do was to tell us how much the mortgage was.

Mr. Davidson: You make that a regular rule now?

Mr. Matthews: We make that a regular rule now, if it is subject to pledge or mortgage. We say the important problem is to fix the value of that which is transferred. Of course, there is no transfer to the executor of the interest of the mortgagee.

Now, Mr. McCloy refers to the case of one hundred thousand dollars in a New Hampshire corporation as the sole asset of the estate, and the estate is indebted to the extent of ninety-eight thousand dollars, hence he says we take it all, because we take the two thousand dollars. Now, I suppose that would be true if he owed ninety-eight thousand dollars of unsecured debts, but it seems to me that it is difficult to conceive of a case where a man who had only one hundred thousand dollars could obligate himself to the extent of ninety-eight thousand dollars without pledging at least some of the property, if not all of it, to secure the debt. I

doubt if such a case as he cites could ever arise, except rarely, where they would clearly be entitled to a large credit, on account of the fact that the debts were to some extent secured.

MR. MCCLOY: May I say a word?

MR. LEWIS: I believe it would be a happy solution if this conference could arrive at some scheme by which we of the several states could repeal the transfer, inheritance or estates taxes, without adversely affecting the activities of the states, and it appears that only two states now are in a way able to do that. One is Alabama and one is Florida. We have with us Mr. Amos of Florida. He may possibly enlighten us on that subject. That would be interesting. How do you get along without that down there?

MR. AMOS (of Florida): Florida has never had either an income or an inheritance tax, and has had no experience along that line. However, we have a great many people who come down there and invest in property. It has been pointed out that we have no such taxes as these, which has been especially emphasized in the last few years, and they said to us, "If you could only guarantee us that this situation will continue, we should feel more like coming down here and investing our money." So under that idea we have made a guarantee that we would continue the present status.

I imagine that is likely to be passed or ratified at the coming election. We may feel called upon to pull down that 25 per cent that the federal wants, since this amendment was proposed.

PROFESSOR GERSTENBERG: How good is that guarantee? What is the vote necessary to amend the constitution? If you do amend your constitution, what is to prevent you from unamending your constitution?

I remember a situation in the Roman law where they passed a provision providing that anybody who repealed a certain law while Marius and Sulla were out fighting battles, would be guilty of a crime punishable by death; but somebody did come out and propose the repeal of the second law first, which would repeal the death penalty. And it seems to me the rich people are in the same fix in Florida; if they amend the constitution now, that they would change it. I do not think you will find that a contract that will be protected by the constitution.

MR. AMOS: No more binding than this meeting is on the next meeting.

MR. HOLCOMB: If I may have a few minutes on the practical effect the federal estates tax has had in Connecticut—I think you will all agree with me that the only use for taxes is as a source of revenue to run the state. I think that there is hardly anything

better calculated to destroy the taxpaying morale of the people than the federal estates tax. It is only natural that people like to see their money spent, and when that money goes out of the city or town or out of the county or out of the state, down to Washington, it is getting farther and farther away. They do not like to pay down there. They do not object to paying the local taxes. There is great objection to paying taxes to the state, but there is terrific objection to paying the federal estates tax.

I say part of that is due to the distance which the money goes, and the largest cause I believe is the way the federal estates tax is administered.

Now, Professor Gerstenberg, in reading Mr. McMaster's paper, told about the very economical administration of the federal estates tax, of one per cent. In Connecticut, it costs less than six-tenths of one per cent to administer our law.

He also said that the Federal Government, by this tax, helps the states in administering their laws. I may say that in Connecticut we are two to five years ahead of the government on the various estates. I absolutely cannot see how the Federal Government helps us out.

MR. GARY: Do they give you any access to their records?

MR. HOLCOMB: They do not.

MR. GARY: We have tried to get them in Virginia, but never could.

MR. HOLCOMB: I continually meet this objection: the federal estates tax is an allowable deduction. All right; how much is your federal estate tax going to be? "I don' know," they say; it is liable to be so much; and there isn't a single estate of any size that dares distribute, without setting up a reserve for after-discovered taxes under the federal estate tax that comes later. They are afraid of it. The trust companies up around Connecticut have been bitten two or three times. I do not blame them for saying they want to set up a reserve for the federal estate tax, which they may come around and ask for later.

The federal estate tax is administered in such a manner that the comparatively small estate is at a distinct disadvantage in working with the government. Why? They have to go to Washington to get any action. Our appraisers, appointed by the probate court, go in and set a value. They act according to their best judgment. Sometimes I do not agree with them. I may get an increased valuation, and they feel I have hit them pretty heavy, perhaps, and what is the next step? An inspector comes along and says, "Well, that stock looks to me to be worth more than that." I start to argue with him. He says, "I cannot help that; I have to make my

recommendation to Washington." He makes his recommendation The fiduciary has one of two courses; either pay the tax because of that increase, or go to Washington and spend the money for the trip and, perhaps, being unfamiliar with the procedure down there, he may have to call in a Washington attorney, or someone else who is versed in the procedure down there. In the majority of cases, it is cheaper to pay the tax, when the only justification for its being paid is that it is cheaper than to fight for what is right.

The estate tax I say, therefore, has done more than almost any other agency to destroy the tax-paying morale. It puts a premium on sharp practices. When a man, as you might say, is contemplating dying, he sets about to see how he can avoid the tax. It hits his everlasting pocketbook, and he is thinking; and while we stand right by and say, "Oh, you are wrong to do that", we have got to agree that human nature is ever present, and the dollar is a mighty big factor, and we sometimes wonder whether or not we should not think a little bit ourselves.

There is just one little inconsistency I should like to point out, Mr. Chairman. It has been said that if the federal estate tax is removed, the states will go wild; in other words, that they will have the feeling that here is a tax burden which has been removed from the taxpayers, and consequently they can substitute a burden by raising the rates higher. In the same breath it is said that by raising the taxes, people will move to the state having the lowest rate. It seems to me that those propositions are entirely inconsistent, and that the latter one is the correct governing and controlling feature. The people of wealth have the power to change their domicile, and it is only natural that they will shift to the state having the lowest tax rate, if it is at all possible for them, and it usually would be. That of itself, I believe, will tend to hold the states down in their rates, because they are practically up against competition.

I can vouch for the fact that we have had people come to Connecticut and say, "Your rates are lower than so and so; what can I do to establish my residence in Connecticut? I want to be a resident of Connecticut." We have on file in the office declarations of intention to be residents of Connecticut, a description of the practical steps that they have taken to comply with the requirements of a change of domicile. Our rates are lower than some other states, and consequently Connecticut looks good to them, and they come.

Mr. J. T. Simms (of West Virginia): Mr. Chairman and gentlemen of the conference: I am not an expert on the subject of inheritance tax. We have a very efficient young man in our inheritance tax department in West Virginia, and we also have an elastic provision in our statute, which gives the tax commissioner great

latitude in adjusting the taxes. For that reason we have had no litigation involving the interpretation of our statute, and I, as counsel for the department, have had very little experience in interpreting it.

I might say that we copied the New York law as it was in 1911, and some few amendments have been made; but this is what I arose to say, after listening to many suggestions and discussions by different members of the conference, I have reached this conclusion personally, that as to the federal tax, this association ought to go on record in recommending its repeal.

Now, I think there is no question but what it is true, under the Constitution of the United States, that the Federal Government can impose this tax, because it is an excise tax, and our Federal Constitution provides that the Congress may impose such taxes. However, I am sure that the framers of the Constitution never contemplated a federal estate tax, when they used the words "excise tax" in the Constitution. But that being true, it narrows down to a question of policy.

Now, I think that the policy of proposing a federal estate tax is unsound, because while we may admit it is an excise tax, when you give a wide definition to that term "excise", and that it may be imposed by the Federal Government, yet it is so closely related to the property that it is in effect a direct tax, and that the people of the states resent. Therefore, it seems to me that if this association will get behind the prospective nominees for Congress in their respective states and ask them to take a position on this question, the people will very readily respond to this movement on our part. In other words, I believe the masses of the people in the states, when the matter is brought to their attention, will support the congressman who makes a declaration in favor of repeal of the federal estates tax. I think there is no question about that. It is a matter of policy, and we have to get at it from that angle rather than from a legal or technical angle.

As to the second proposition here, of avoiding multiplicity of taxes upon estates, I would suggest, Mr. Chairman, that we raise a committee of experts from this body on matters of estate taxes, to consider and propose a uniform law that would be accepted by the states, subject to their peculiar constitutional provisions, and report back to this body its findings and suggestions in the form of a statute, and after it is passed upon, then we may submit that to the respective legislatures of the various states, with some assurance of consideration.

Many of you, like myself, have had some experience with the American Bar Association, and that association has succeeded in having the legislatures of the states adopt some uniform laws. They are working on others. As an illustration, there is the uni-

form negotiable instrument act. Most of the states of the Union, or a majority of them, have adopted the uniform negotiable instrument law; so the laws today are the same on negotiable instruments. That was brought about through the influences of the American Bar Association.

I see no reason why this association could not follow something of the same policy, with respect to a uniform estate tax law.

I beg your pardon for having said so much.

CHAIRMAN BELKNAP: I think we are going to have to get a little action. May I say a word or two in explanation of what we have been doing? Regarding the model inheritance tax law, which was drawn up, my experience with it is that it is not perfect; I was instrumental in having it passed in Kentucky this year. There is real interest in this thing. I have purposely let this meeting wander pretty much all over the lot, for several reasons. One of them is because I could not help it, and the second one is that by letting it wander, everybody here has got me convinced that no single subdivision is going to solve these problems. That is about as evident as the nose on my face. It is not going to be solved here now.

Now, then, what are we going to do? We have heard some pros and cons. I personally, after long consideration and five years of watching it, believe that there is a chance of abolishing the federal estates tax. I say that advisedly. It is going to take trouble. A lot of people say that this talk of abolishing the estate tax is foolishness. It is not foolishness. There is going to come a reversion, a revolution on it; not a bloody revolution, as the estates taxes have been hitting only the big men, and the big man has always been able to take care of himself, because he could hire the best lawyers in the country.

As we saw this morning, I still do not know whether the Harkness estate has any place of residence. Apparently the lawyers persuaded all the states that Mr. Harkness did not live anywhere. If you can hire lawyers like that, you can take care of yourself, but the poorer man, the sister of the man with the drug store on the corner, is going to be in a pinch from now on, and they can make themselves felt as voters; so that we are going to have behind us a punch we have never had before, and we are getting that punch right now; people are waking up that never woke up before.

The whole situation is in very different shape from what it was four or five years ago. Now, that being true, we called this conference; we arranged this conference today with the idea that we would get some expression, as we have gotten, and we want a further expression as to the feelings of this conference.

Several of you have suggested it, and I believe the suggestion

is a good one, that a committee be appointed by this meeting to draw up recommendations to the bigger body when it may meet Wednesday, and discuss these topics.

We will have Mr. Winston, Secretary of the Treasury; and Mr. Atwood, whose articles you well know, is going to speak at that time, and I believe that with the full strength of the conference there we shall be able to put forward a plan.

The whole thing is complicated. There is not a tax law that you can draw in connection with estates that is simple. Mr. McCloy is right on that; that death tax laws are bound to be complicated. The whole situation is so complicated from A to Z that I suggest we proceed carefully on the thing; that we use our heads on it. I believe that the general consensus of opinion is that if the federal estates tax could be abolished, it would be desirable. I will ask for a rising vote here of the people how they feel on that. Supposing the federal estate tax could be abolished, will all those in favor of abolishing it please arise?

(Rising vote)

CHAIRMAN BELKNAP: You see we have a fairly good majority. Will you sit down, and those who oppose abolition of the federal estates tax arise?

(Rising vote in opposition)

DELEGATE VOTING IN OPPOSITION: Because my solitary vote might be misconstrued—

CHAIRMAN BELKNAP: There are two of them.

MR. RUSLANDER (of Pennsylvania): There is a popular song which describes a guest going to a wedding and getting there too late for the first course, and reaching out for the second course, getting eight forks in his hand.

That is the way this taxation looks. There is only one dish you can serve from, and every state has a fork sharpened, and some states, like Tennessee, only get a jab in the hand.

Now, that situation is not getting any better; it is getting worse. The tax laws of the different states are not showing a tendency to be more moderate; they are showing a tendency to reach out more and more. Now, until the states learn to use those forks with discretion, somebody has to be careful to carve the chicken; and until we have a model tax law by the states, or until we have some evidence of the fact that these forks will be used properly, we ought to have the lid on. Uncle Sam, to demonstrate that, ought to do the carving for all of them.

CHAIRMAN BELKNAP: He is not doing the carving right now; he is just taking the chicken.

I think you are absolutely right about the states. I have never let up on my desire to do away with everything but the one tax, whatever that one tax should be. I often wish that the administrative features were such that I could agree with my friend, Mr. Harrington, and put the tax where the property is; but that is abhorrent to the history of the development of death taxes in this country.

Like many others here today, I realize that for the present it is absolutely ridiculous to talk of the total abolition of the non-resident tax. That is not going to happen in the next five years or the next ten years; but the thing can be regulated between the states, if they will—and they will regulate it easier than you think. I was pointing out the ease with which I got the Kentucky law arranged properly this year; it is not perfect yet, but they listened. I speak for the State of Kentucky, for the Governor, and I speak as a personal representative of the State Tax Commission of Kentucky. They will agree to practically anything reasonable to bring Kentucky in line with the other states.

It is something like "Lightnin' ". You remember in "Lightnin' " the character who said he drove a swarm of bees across the plains in '49, and never lost a bee!

I am not like that, but be that as it may, the various states will listen to reason on it, much more than we give them credit for; and the various states, as such, if they get behind the congressmen and senators, can make them sit up and take notice. I just made mine sit up before I left home.

A Delegate: May I ask you a question? I want to ask a very impolite and blunt question.

Chairman Belknap: Go ahead.

Same Delegate: Right along the line of what you said and what the previous speaker said. My interest in this subject has been rather recent, but it has been rather intensive. I have read the proceedings of the National Tax Conferences all the years back, and I think in every year since the federal estate tax existed, you have voted a resolution opposing it, and there were only two persons here a few minutes ago that voted for the federal estate tax; and many speakers have spoken of the evils of the federal estate tax.

Now, as an outsider, and just to look at it from an outside point of view, I feel myself in a land of utter unreality, because only a few months ago the conference committee put through an increase in the federal estates tax, with a maximum of forty per cent, and as far as I know, without any public hearing, and I did not hear of any private hearing.

Haven't the estate tax commissions and the state legislatures any influence with the United States Senate, if not with their own

senators? The commissioner from New York State spoke for the Governor. Hasn't that governor any influence with a Democratic senator from New York State, who, I believe, voted for this increase? What is the use of talking this thing, if you let the United States Senate put this thing over?

I said I was going to be impolite, and I am. I do not understand it. You talk about this year after year, and yet the Senate does this with only two hours' debate on the floor. Didn't you go there?

CHAIRMAN BELKNAP: Not I.

SAME DELEGATE: Why didn't somebody go? What is the use of these excuses back and forth and post-mortems?

CHAIRMAN BELKNAP: You are a good deal like Mark Twain was about the weather. He says people talked a good deal about the weather, but never did anything about it. That is a very pertinent question, and not an impudent question at all.

SAME DELEGATE: I really should like to know.

CHAIRMAN BELKNAP: I was interested to the extent of putting through the Kentucky state legislature a petition to Congress that it abolish the federal estates tax. It went through without a single dissenting voice in either house. They did not even take interest enough in it to oppose it. That is the truth of it.

The only thing that accomplishes anything in political bodies that I have seen, is united effort of some sort. Sometimes the cards get stacked, as they did in this case, for a thing to go through one way. To accomplish this sort of thing, it takes work, organization, and a united effort.

Suppose the governor of Kentucky said to Senator Stanley, "I wish you would vote against this tax." Senator Stanley would say, "What, is the whole gang for it?"

If the governor of Kentucky gets together with the governor of New York and the governor of Tennessee and the governor of Alabama, or the other governors, because Alabama does not care, but we will say, the governor of Mississippi, and they all say to the Senate, "This thing has got to quit," it will quit.

I have been on committees usually that recommended that the thing be abolished, and that is all we have done, with the exception of the fact that we have written in the records of the national body that we were opposed to it. Now, my notion is that we can get together a meeting of the governors on this, because we can put up to the governors that this forty per cent tax that Congress—it is a little unfair to use that figure, and yet I do not know how to express it otherwise—has passed, are going to cut so materially into the state revenue as to very adversely affect them.

Now when you can put that up to a governor, he knows what is wanted of him, and he is going to put it up to the other people. We are not going to accomplish it the first month we work on it. I have no illusions on that. But we have got to make a start, and we have got to make a fighting start, a hard fighting start, to get enough momentum to carry the thing up the hill and to run it on the level when we get going.

From the showing here it is very evident that there is support for this movement. Before I close I want to read a telegram from the governor of Maryland, signed Albert C. Richie:

> "My personal opinion is that the federal estates tax should be discontinued entirely, and that the states should adhere among themselves to a uniform inheritance tax law, which would avoid the existing inequalities as to rates and so forth."

I do not see how any material progress can be made along those lines or through remedial lines, without the cooperation of the Federal Government. Therefore, I am much in favor of a conference in which federal and state officials will participate. We have never had any meeting at which federal and state officials have really got together on this thing and tried to work out anything. The crisis is new; it never happened before that we were going to take most of an estate, or that we were going to take such big bites of it as to really cripple it.

Take that estate in Chicago, where two boys were left a couple of millions by the father. If they do not find some way around it, all of their money will go to pay the tax on the other part of the estate, because they, as residuary legatees, will have the five million dollars to pay.

I don't care if you are a rank bolshevist, if you are a red radical, if you are a soviet supporter, you realize it is not square to do that, unless you do it with everybody. If you do it with everybody, all well and good, if they vote that way, but let us not take away one man's inheritance and say we don't believe in the rich getting too much, and then let the other man get off with a comparatively small tax and say we cannot help that.

I believe we should recommend to the national tax association—and I would like to hear a motion to that effect—that a committee be appointed to offer proper resolutions to the conference, when it meets Wednesday on this subject, that the conference will put under headway machinery that will get the governors of the states together and the thing started. What is your pleasure on it, and what is your opinion on it? Is that an impossible plan, or is it possible?

Mr. Lewis: Mr. Chairman, I move that the Chairman be directed to appoint a committee to draw up proper resolutions advising the

parent body, when the national tax association meets, of the consensus of our opinion.

(Motion duly seconded)

CHAIRMAN BELKNAP: It is moved and seconded that the chair appoint a committee to apprise the larger body of our sentiments on this matter, and to counsel with them for its adoption.

MR. JOSEPH S. MATTHEWS: I move an amendment to that motion, to the effect that the chairman be a member of the committee.

(Amendment duly seconded)

CHAIRMAN BELKNAP: Any remarks?

(Ayes and Noes)

(Amendment carried)

CHAIRMAN BELKNAP: Are there any remarks to be made on the original motion?

A DELEGATE: This is leading to the framing of a uniform tax statute?

CHAIRMAN BELKNAP: Yes, sir.

A DELEGATE: I just wanted to ask for that information.

(Call for the question)

MR. LEWIS: And also the abolition of the federal estate tax.

PROFESSOR GERSTENBERG: It is not the framing, so much as it is something leading to the adoption. It is to get the states to work together and the Federal Government to keep hands off, on the condition that the states do work together. That is my understanding. There is no need of the Federal Government abolishing this tax, unless the states work together, and no need of the states working together unless the Federal Government abolishes this tax, because there won't be anything to tax anyhow.

DELEGATE: And a plan to put both into operation?

(Ayes and Noes)

CHAIRMAN BELKNAP: Carried.

MR. LEWIS: Before we adjourn, we all know from experience that all state taxing officers have difficulty in certain estates, because of the delay of the Federal Government in adjusting the tax, and I should like to inquire of some person, why the delay in Washington? Is it lack of appropriation to employ sufficient clerks, or what? If that is the case, then this small cost of collection does not amount to much. We should get better results if it were two

per cent or three per cent. What we want to do is to settle these estates.

CHAIRMAN BELKNAP: The recent law calls for prompt settlement, but apparently they don't get it, I am afraid. The law calls for settlement within one year after the executor turns in his papers. The department is given only one year to settle up the tax.

MR. BERRY: I think I may answer the gentleman. My institution is filing about forty-seven estate tax returns a year. The field agents are now investigating the returns filed in 1920, due in 1920 and 1921. That means that we have to hold that estate open or retain a certain portion of that estate until after the Federal Government has issued its certificate or released the lien. They hold a lien against the entire estate for a period of ten years. If an additional tax is disclosed, the executor or administrator is liable for that tax; consequently, to protect himself, he retains a portion of the estate.

I have had it up with our local man, and also at Washington. I have made repeated requests for investigation under the last act, which provides for an investigation within a year after the return is filed. If it is not made within that time, the lien is partly released. The reply usually received from the local agent is, "There are other executors who want their estates closed. Our division has six field agents covering the entire state. Those men cannot get around; there are not a sufficient number of men to do the work in the field."

I should like to answer the other gentlemen who asked why some action was not taken at the last session of Congress in connection with this tax. The trust section of the american bankers association maintains what is commonly called a lobby in Washington, in connection with tax matters affecting estates and trusts.

I hope there is no Senator here—but we were double-crossed, and I think that will explain the whole situation as to why there are certain provisions in the new law that were not there before. The original Mellon plan contemplated certain changes from the old law, which, in committee, on hearings, it was agreed would be left out. It was agreed by practically all of the members of the committee that the gift tax would not be enacted into law.

The members of the legislative committee of the trust section of the american bankers association said, "That is fine work;" but when the bill went from the Senate back to the committee, someone slipped that gift tax in, after we had been promised that the gift tax would not be enacted into law. Within a very short time, before we had time to get together again, the gift tax was a law, and it is a law today. So the reason that we have so many provisions in it and these high estate tax rates and the gift tax, is because we were double crossed.

Mr. Holmes (of Kansas): In regard to the delay in settling these estates, it is want of cooperation with the Federal Government officials. We are on perfect terms with the internal revenue collector's office. The inspector's reports come to us upon every estate. Ours go to him. As soon as the estate is so rounded up that either the Federal Government or our department knows what the tax ought to be, we are morally certain it will not be revoked. I think that is the real trouble. Of course, there are many delays, on account of misunderstandings, on account of disagreement as to what the tax is, with the estate, but we are on confidential relations in Kansas with the Federal Government, and when we finish a case, it is done, and we finish them just as fast as they can be investigated and properly appraised.

Just one word in regard to Congress not paying any attention to what this body desires. I want to say to you that before coming here I met several of the congressmen and one senator, and they did not know what this body was that I was going to attend.

Mr. Berry: The standard set by the average state tax commission is twenty-four investigations per month per man. That means 288 investigations in a year. The standard is high; it is set all right; but they make on an average approximately three investigations a month, which materially reduces the aggregate investigations per year.

The thing for this organization to do would be to recommend to the state tax commissions to increase their investigating personnel to a number sufficient to investigate every return within a period of a year from the time it is filed. That would expedite it.

Chairman Belknap: I do not know that you are familiar with the English system. We like to make ourselves think that we are much faster than the English. I was in the death duties office in London talking to the official who has charge of the thing generally, and I asked him how long it took to settle up an estate, and he said they were not very fast, that it took them about two weeks after they got the papers in. "Well," I said, "my goodness, our Federal Government would just faint if anybody suggested that we finish up an estate in two weeks."

I looked into it a little further and I found this: there is a body called the surveyors institute, which is sort of half-way between the American Institute of Accountants and a body that would be somewhat similar, if it were made up of appraisers. When they say surveyor, they mean appraiser. This body is semi-official; it is really a little more official than our accountants' institute. It is run on a very high plane; and the appraisals made by those surveyors are taken at face value by the government. A man is hired, and he appraises the estate for all purposes, and that appraisal once made is accepted by the government.

Now, the great difficulty, of course, is that we have no such body over here. Whether we can develop that as time goes on or not, I don't know, but it is rather an interesting thought. It may be that we can have what several men have suggested, which is a sort of trust company clearing house, which would handle a very large number of estates, where the government would simply recognize a certain body, made up from the trust companies, something on the order of the federal reserve bank director—something of that sort. Whether a thing of that sort can be worked out or not, has nothing to do with this particular problem that is before us now; but with your backing now, we are going ahead and try to draw up something for the Wednesday meeting which will be of some use.

Has anybody got anything more to say before we go to get some supper?

Mr. Holmes (of Kansas): There has been a question raised here several times in regard to stock loss, because of delay, because of losing the advantage of the market just at the time. We have a way of disposing of that that might be of benefit to some people. Perhaps they haven't any better way, anyhow.

When that question arises, and immediately after we are notified of the existence of an estate and the ownership of stocks, and that we should give a right to transfer, we immediately make an estimate of what the tax would be, providing there were no deductions; the representative of the estate deposits with the chief clerk of our commission that amount, and afterwards, when the actual amount is ascertained, we refund to them, with whatever interest is allowed on time deposits.

Chairman Belknap: That is in the model law, but the trouble is that some states are so arranged that they cannot refund, they have some archaic provisions that once you pay it in, it is gone.

Mr. Holmes (of Kansas): We have the same provision. If it is paid into the state treasury it cannot be withdrawn without an act of the legislature. We never let it get out of the hands of the state tax commission.

Delegate from Mississippi: I will say along that line that Mississippi has a provision in its constitution that money cannot be paid out of the treasury without legislation. We meet that condition by letting the executor or administrator of the estate pay his money over to the tax commission, and we put it in a bank. We simply place the money there to the credit of some officer of the tax commission and hold it, and when we settle up with the state we send to the treasurer the amount due, and pay back to the executor the amount not due.

A Delegate: Do you think that is altogether good accounting?

DELEGATE FROM MISSISSIPPI: We do that as a matter of meeting the situation.

PROFESSOR GERSTENBERG: I should like to make a motion that I hardly think the chairman can make. I think this body knows the great amount of work which the chairman, Mr. Belknap, does during the course of the year. I doubt whether anyone, with the exception possibly of Mr. Holcomb, gives so much time to the work of the association as does Mr. Belknap. I am, therefore, going to ask a rising vote of thanks for all that Mr. Belknap has done during the past year.

(Rising vote and applause)

CHAIRMAN BELKNAP: I greatly appreciate that, but I think you over-exaggerate.

(Thereupon the informal conference on inheritance taxation adjourned)

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